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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1965

No. 1173

HARRY R. HUGHES AND JOHN-CLARENCE NORTH,
*Petitioners,*

v.

W. F. STRONG, ET AL.,
*Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

## PETITIONERS' APPENDIX

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# APPENDIX A — STATUTES

## CHAPTER 3, MD. LAWS, 1965 SPECIAL SESSION

AN ACT to repeal Section 42 of Article 40 of the Annotated Code of Maryland (1957 Edition and 1964 Supplement), title "General Assembly," subtitle "Apportionment," and to enact in lieu thereof new Sections 42, 42A, 42B, 42C, 42D, and 42E, to stand in the place of the section so repealed, and to be under the new subheadings "House of Delegates" and "Senate," revising the laws now providing for the apportionment of representation in the House of Delegates and in the Senate of Maryland; providing for the apportionment, membership, and election of members of the House of Delegates and of the Senate, and for the districts which are to be the basis of representation in each of the two Houses; imposing certain duties upon the Governor of Maryland in relation to such apportionment, representation, and districts; providing for the effect of this Act upon certain sections in Article 3 of the Constitution of Maryland; providing for contingencies whereby part or all of this Act becomes no longer effective; providing for the non-effectiveness of other reapportionment plans in the event that this Act is found to be valid and requiring judicial determination of the validity of this Act; and relating generally to apportionment and representation in the House of Delegates and in the Senate of Maryland, to the election of members thereof, and to the duties of certain State officers in relation thereto.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That Section 42 of Article 40 of the Annotated Code of Maryland (1957 Edition and 1964 Supplement), title "General Assembly," subtitle "Apportionment," be and it is hereby repealed, and that new Sections 42, 42A, 42B, 42C, 42D, and 42E, be and they are hereby enacted in lieu thereof, to stand in the place of the section so repealed, and to be under the new subheadings "House of Delegates" and "Senate," all to read as follows:

House of Delegates

42.

The membership of the House of Delegates of Maryland shall consist of one hundred and forty-two (142) Delegates. Each county and Baltimore City shall have one Delegate as a minimum, making a total of twenty-four (24) Delegates. The remaining one hundred and eighteen (118) Delegates shall be apportioned among the several counties and Baltimore City according to the mathematical formula of equal proportions, as more particularly described elsewhere in this subheading.

42A.

(a) The mathematical formula of equal proportions shall be applied for apportioning one hundred and eighteen (118) of the memberships in the House of Delegates, after the initial award of one Delegate for each county and Baltimore City.

(b) The formula shall be applied by these computations: the population of each county and Baltimore City is separately divided by the geometric mean between the numerals 1 and 2 (1.414), next by the geometric mean between the numerals 2 and 3 (2.449), next by the geometric mean between the numerals 3 and 4 (3.464), and continuing in this progression so long as necessary to complete the computation.

(c) The resulting quotients for the House of Delegates shall be arranged in order of size, from the largest to the smallest, and the first one hundred and eighteen (118) listings give additional memberships to the particular county or Baltimore City; and the Delegates thus allocated to Baltimore City shall be apportioned among the several legislative districts of the City in the same manner.

42B.

(a) If a county under the calculations required by this subheading is awarded more than eight (8) Delegates, the county shall be divided into districts.

(b) If Baltimore City under the calculations required by this subheading is awarded more than forty-eight (48) Delegates, the City shall be divided into additional legislative districts from time to time.

(c) In any such division, the county or Baltimore City shall be divided into districts under the formula in this subheading, with not fewer than four Delegates and not more than eight Delegates in any one district.

(d) Districts for membership in the House of Delegates shall be established by law, based substantially upon population, and as compact and contiguous as reasonably possible.

(e) All Delegates in a county which as districts shall be residents of and elected from their respective districts, and they shall not be elected from the entire county; and all Delegates in Baltimore City shall be residents of and elected from their respective districts, and they shall not be elected at large from Baltimore City. The Delegates shall have qualifications and residential requirements as provided in Section 9 of Article 3 of the Constitution of Maryland.

(f) The offices of Delegates here specified are created in the several counties. Baltimore City, and districts as this subheading is applied from time to time; and they shall be filled from time to time under the regular provisions for election or replacement.

42C.

(a) Beginning in the year 1970 and continuing thereafter, within one month after the publication of any Federal decennial census the Governor by proclamation shall announce the population determined in the census for each county and for Baltimore City. In the proclamation the Governor also shall announce the total number of Delegates to which each county and Baltimore City is entitled, according to the formulas and provisions contained in this subheading.

(b) At a session of the General Assembly after the proclamation by the Governor, the General Assembly by statute shall fix the boundary lines of districts if they are required under this subheading in any county or Baltimore City; or, if a change in existing districts is necessary or desirable, these boundary lines shall be fixed agreeably to the requirements and specifications of this subheading for districts. If this statute is not enacted by the General Assembly and signed by the Governor by the day which is five months prior to the next ensuing primary election at which candidates for the House of Delegates will be nominated, the Governor, agreeably to the other provisions of this subheading and by proclamation issued and published not later than thirty days after the beginning of this five-month period, shall fix the boundary lines of districts in any county or Baltimore City; and the boundaries of the several districts as thus fixed by the Governor shall be the boundaries until they are changed pursuant to the provisions of this subheading or by the General Assembly prior to the next or any subsequent primary election for members of the House of Delegates.

(c) At the time of the next regular election for members of the General Assembly (including primary and general elections) after the district lines are set by statute or by proclamation of the Governor, the number of Delegates specified in the statute or proclamation shall be elected for each county, and the number provided for each legislative district that may be created and described in the statute or proclamation shall be elected. The apportionment thus made shall continue until changed under this subheading. Nothing in the proclamation, statute or proclamation, or election affects the election, tenure, powers, or duties of Delegates in office at the time these events occur, for the remainder of the terms in which they are then serving.

(d) The foregoing provisions of this section do not apply, and the following provisions of this section do apply, to the elections for members of the House of Delegates in the years 1966 and 1970.

(e) The primary and general elections for members of the House of Delegates held in the years 1966 and 1970 shall be based upon a statute enacted by the General Assembly which announces the population for each county and Baltimore City, as determined in the regular Federal decennial census in the year 1960. The number of Delegates to which each county and Baltimore City is entitled, the number of districts in any county or Baltimore City, and the boundaries of these districts shall be for the elections in the year 1966 and in the year 1970 as fixed by statute of the General Asembly enacted by the General Assembly and signed by the Governor not later than the day which is five months prior to the next ensuing primary election at which candidates for the House of Delegates will be nominated. If this statute to fix the number of Delegates and the number of districts and to establish boundaries for the several districts is not enacted by the General Assembly and signed by the Governor by the day which is five months prior to the next ensuing primary election at which candidates for the House of Delegates will be nominated, the Governor, agreeably to the other provisions of this subheading and by proclamation issued and published not later than thirty days after the beginning of this five-month period, shall fix the number of Delegates to which each county and Baltimore City is entitled, the number of districts in any county or Baltimore City, and the boundaries of these districts; and these numbers and boundaries as fixed by the Governor shall remain as fixed until they are changed pursuant to the provisions of this subheading or by the General Assembly prior to the next or any subsequent primary election for members of the House of Delegates. Nothing in this subsection affects the election, tenure, powers, or duties of Delegates in office at the time these events occur, for the remainder of the terms in which they are then serving. This subsection becomes fully effective when the members of the House of Delegates have been elected in November, 1966, and in November, 1970, and thereafter have qualified for and entered upon their terms of office. This subsection does not apply, and subsections (a), (b), and (c) of this section

do apply (if still effective), to elections for members of the House of Delegates in any year after 1970.

42D.

(a) This subheading prevails to the extent of any inconsistency over Sections 2, 4, 5, 6, 9, and 13 of Article 3 of the Constitution of Maryland.

(b) This subheading provides for establishing the membership of and for fixing certain districts for representation in the House of Delegates of Maryland, until such time as it is superseded in whole or in part by an amendment to the Constitution of Maryland. With no further action required by the General Assembly, and to the extent of any conflict, this subheading is no longer effective, in whole or in part, as of the effective date of any such amendment of the Constitution of Maryland; except that nothing thereby affects the election, tenure, powers, or duties of Delegates in office at the time these events occur, for the remainder of the terms in which they are then serving.

Senate

42E.

(a) The membership of the Senate consists of fifty-three (53) Senators. The State is divided into twenty-nine State Senatorial Districts composed and to elect the number of Senators as follows:

(1) District 1—Garrett County—1 Senator.

(2) District 2—Allegany County—1 Senator.

(3) District 3—Washington County—1 Senator.

(4) District 4—Frederick County—1 Senator.

(5) District 5—Carroll County—1 Senator.

(6) District 6—Howard County—1 Senator.

(7) District 7—Montgomery County—6 Senators.

(8) District 8—Prince George's County—6 Senators.

(9) District 9—Charles County—1 Senator.

(10) District 10—St. Mary's County—1 Senator.

(11) District 11—Calvert County—1 Senator.

(12) District 12—Anne Arundel County—3 Senators.

(13) District 13—Baltimore City, First Legislative District—2 Senators.

The First Legislative District is composed of the area within wards one, two, three, four, and five; and within the area of precincts seven to fourteen inclusive, in ward number six; and in the area within the precincts one to twenty-nine, inclusive, of ward number twenty-six; and of those portions of precincts thirty-seven and thirty-eight of ward number twenty-six which are situated southeasterly from the center line of Sinclair Lane; and of the area within precinct thirty-nine of the twenty-sixth ward.

(14) District 14—Baltimore City, Second Legislative District—2 Senators.

The Second Legislative District is composed of the area within precincts one to six, inclusive, of ward number six; and of the area within ward number 7; and of the area within precincts two and three and within precincts fourteen to twenty-six, inclusive, in ward number eight; and of the area within precincts six to twenty-two, inclusive, of ward number nine; and of the area within precinct twenty-five of ward number nine; and of the area within wards numbers 10, 11, and 12; and of the area within precincts one, two, and twelve of ward number fourteen; and of the area within precincts thirty to thirty-four, inclusive, of ward number twenty-six.

(15) District 15—Baltimore City, Third Legislative District—2 Senators.

The Third Legislative District is composed of the area within precinct one and of precincts four to thirteen, inclusive, of ward number eight; and of the area within

precincts one through five, inclusive, and of precincts twenty-three, twenty-four, and of precincts twenty-six to thirty-one, inclusive, of ward number nine; and of the area within precincts thirty-five and thirty-six in ward number twenty-six; and of those portions of precincts thirty-seven and thirty-eight in ward number twenty-six lying northwesterly of the center line of Sinclair Lane; and of precincts forty, forty-one, forty-two, forty-three, forty-four, and forty-five in ward number twenty-six; and of the area within precincts one to seventy-seven, inclusive, of ward number twenty-seven.

(16) District 16—Baltimore City Fourth Legislative District—2 Senators.

The Fourth Legislative District is composed of the area within ward thirteen; and of the area within precincts three to eleven, inclusive of ward fourteen; and of the area within precincts four, four-a, four-b, four-c, ten, and seventeen to forty-two, inclusive, in ward fifteen; and of the area within precincts one to seven, inclusive, and within eighteen to twenty-five, inclusive, of ward sixteen; and of the area within ward seventeen; and of the area within precincts ninety-five, ninety-six; ninety-seven and ninety-nine of ward twenty-seven.

(17) District 17—Baltimore City, Fifth Legislative District—2 Senators.

The Fifth Legislative District is composed of the area within precincts one, two, three, five to nine, inclusive, and eleven to sixteen, inclusive, in ward fifteen; and of the area within precincts eight to seventeen, inclusive, in ward sixteen; and of the area within precincts one to twelve, inclusive, and within precincts sixteen, seventeen, and eighteen, and within precincts twenty-one to twenty-five, inclusive, of ward number twenty; and of the area within precincts seventy-eight to ninety-four, inclusive, and of precincts ninety-eight and of precincts one hundred to one hundred five, inclusive of ward number twenty-seven; and of the area within ward number twenty-eight.

(18) District 18—Baltimore City, Sixth Legislative District—2 Senators.

The Sixth Legislative District is composed of the area within ward eighteen and ward nineteen and of the area within precincts thirteen, fourteen, fifteen, nineteen, and twenty in ward twenty and of the area within wards twenty-one, twenty-two, twenty-three, twenty-four and twenty-five.

(19) District 19—Baltimore County—7 Senators.

(20) District 20—Harford County—1 Senator.

(21) District 21—Cecil County—1 Senator.

(22) District 22—Kent County—1 Senator.

(23) District 23—Caroline County—1 Senator.

(24) District 24—Queen Anne's County—1 Senator.

(25) District 25—Talbot County—1 Senator.

(26) District 26—Dorchester County—1 Senator.

(27) District 27—Wicomico County—1 Senator.

(28) District 28—Worcester County—1 Senator.

(29) District 29—Somerset County—1 Senator.

(A-1) Any Senatorial District which is entitled under the provisions of this section to elect more than two Senators shall be divided into subdistricts. Each subdistrict shall elect a number of Senators which shall be not more than two Senators from each subdistrict. If the subdistricting of any Senatorial District has not been accomplished by April 1, 1966, by act of the General Assembly, the Governor of Maryland by proclamation shall forthwith determine the number and boundaries of the subdistricts, but not later than May 1, 1966.

(b) The regular elections in the years 1966 and 1970, for four year terms in the Senate of Maryland beginning respectively in the month of January, 1967, and in the month of January, 1971, shall be on the basis of the Dis-

tricts and numbers of Senators provided in Subsection (a) of this section. The same Districts and number of Senators shall apply to subsequent elections and terms unless they are changed pursuant to the provisions of this section which follow.

(c) No person shall be eligible as a Senator who at the time of his election is not a citizen of the State of Maryland, and who has not resided therein for at least three years next preceding his election, and the last year thereof, in the State Senatorial District which he may be chosen to represent, if such Senatorial District shall have been so long established; and if not, then in a portion of a county or of Baltimore City which is a part of the State Senatorial District; and no person shall be eligible as a Senator unless he shall have attained the age of twenty-five years at the time of his election.

(d) This section establishes the Districts and membership of the Senate of Maryland until such time as it is superseded by an amendment for that purpose to the Constitution of Maryland. Automatically, and with no further action required by the General Assembly, it is repealed and no longer in force as of the effective date of such an amendment to the Constitution; except that such repeal does not affect the election, tenure, powers, privileges, and duties of any member of the Senate in office at the time of the repeal, for the remainder of the term for which he has been elected.

(e) This subheading prevails to the extent of any inconsistency over Sections 2, 4, 9, and 13 of Article 3 of the Constitution of Maryland.

(f) If an amendment to the Constitution of the United States is proposed and ratified providing in substance that one House of a State Legislature may be established and composed of representatives chosen on a ground, or grounds, other than that of population, or if the Congress of the United States by statute modifies the jurisdiction of the Federal courts of the United States so that the Courts have no jurisdiction in cases involving the membership

and districts of one House of a State Legislature, this subheading is no longer effective, and the membership and composition of the Senate of Maryland shall be as on January 1, 1965. At that time, if it is at least ninety days prior to the next ensuing primary election at which nominees for the Senate of Maryland are to be chosen, and with no further action required by the General Assembly of Maryland, this subheading is no longer effective; except that nothing thereby affects the election, tenure, powers, or duties of the Senators in office at the time these events occur, for the remainder of the terms in which they are then serving. If the amendment to the Constitution of the United States is ratified less than ninety days prior to the next ensuing primary election in the State of Maryland at which nominees for the Senate of Maryland are to be chosen, or if the statute of the Congress becomes effective less than ninety days prior to that primary election, the primary election and the next ensuing general election shall be conducted under the provisions of this subheading, and at the primary and general elections for the Senate of Maryland occurring four years later, and thereafter, the membership and composition of the Senate of Maryland shall be as on January 1, 1965.

SEC. 2. *And be it further enacted,* That if a proposed amendment to the Constitution of Maryland, enacted by the General Assembly at the Special Session of 1965 and concerning the subject matter of this Act (in addition to certain other matters) is submitted to the qualified voters of the State for adoption or rejection at the regular election in the month of November, 1966, and fails of adoption by the qualified voters of Maryland, this Act is repealed as of the date of the Governor's proclamation as to the rejection of the proposed amendment to the Constitution, with no further action required by the General Assembly; but nothing in this repeal affects the election, tenure, powers, or duties of Delegates and Senators in office at the time the repeal takes effect, for the remainder of the terms in which they are then serving.

SEC. 3. *And be it further enacted,* That if any word, phrase, clause, section, or other provision of this Act is

declared unconstitutional or invalid by a court of final appeal, the unconstitutionality or invalidity shall not affect any other word, phrase, clause, section, or provision of this Act, and to this end the provisions of this Act are declared severable.

SEC. 4. *And be it further enacted,* That in the event this Act shall be declared valid by the Court of Appeals of Maryland, then chapter ..... (Senate Bill No. 5) as enacted by the General Assembly at the Special Session of October 1965 shall not become effective and the Attorney General of Maryland is hereby directed to promptly request a judicial determination of this Act by the appropriate legal procedure.

SEC. 5. *And be it further enacted,* That, subject to the provisions of Sec. 4 above; this Act shall take effect June 1, 1966.

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CHAPTER 2, MD. LAWS, 1965 SPECIAL SESSION

AN ACT to repeal Section 42 of Article 40 of the Annotated Code of Maryland (1957 Edition and 1964 Supplement), title "General Assembly," subtitle "Apportionment," and to enact in lieu thereof new Sections 42, 42A, 42B, 42C, 42D, and 42E, to stand in the place of the section so repealed, and to be under the new subheadings "House of Delegates" and "Senate," revising the laws now providing for the apportionment of representation in the House of Delegates and in the Senate of Maryland; providing for the apportionment, membership, and election of members of the House of Delegates and of the Senate, and for the districts which are to be the basis of representation in each of the two Houses; imposing certain duties upon the Governor of Maryland in relation to such apportionment, representation, and districts; providing for the effect of this Act upon certain sections in Article 3 of the Constitution of Maryland; providing for contingencies whereby part or all of this Act becomes no longer effective; and relating generally to apportionment and representation in the House of Delegates and

in the Senate of Maryland, to the election of members thereof, and to the duties of certain State officers in relation thereto.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That Section 42 of Article 40 of the Annotated Code of Maryland (1957 Edition and 1964 Supplement), title "General Assembly," subtitle "Apportionment," be and it is hereby repealed, and that new Sections 42, 42A, 42B, 42C, 42D, and 42E, be and they are hereby enacted in lieu thereof, to stand in the place of the section so repealed, and to be under the new subheadings "House of Delegates" and "Senate," all to read as follows:

House of Delegates

42.

The membership of the House of Delegates of Maryland shall consist of one hundred and forty-two (142) Delegates. Each county and Baltimore City shall have one Delegate as a minimum, making a total of twenty-four (24) Delegates. The remaining one hundred and eighteen (118) Delegates shall be apportioned among the several counties and Baltimore City according to the mathematical formula of equal proportions, as more particularly described elsewhere in this subheading.

42A.

(a) The mathematical formula of equal proportions shall be applied for apportioning one hundred and eighteen (118) of the memberships in the House of Delegates, after the initial award of one Delegate for each county and Baltimore City.

(b) The formula shall be applied by these computations: the population of each county and Baltimore City is separately divided by the geometric mean between the numerals 1 and 2 (1.414), next by the geometric mean between the numerals 2 and 3 (2.449), next by the geometric mean between the numerals 3 and 4 (3.464), and

continuing in this progression so long as necessary to complete the computation.

(c) The resulting quotients for the House of Delegates shall be arranged in order of size, from the largest to the smallest, and the first one hundred and eighteen (118) listings give additional memberships to the particular county or Baltimore City; and the Delegates thus allotted to Baltimore City shall be apportioned among the several legislative districts of the City in the same manner.

42B.

(a) If a county under the calculations required by this subheading is awarded more than eight (8) Delegates, the county shall be divided into districts.

(b) If Baltimore City under the calculations required by this subheading is awarded more than forty-eight (48) Delegates, the City shall be divided into additional legislative districts from time to time.

(c) In any such division, the county or Baltimore City shall be divided into districts under the formula in this subheading, with not fewer than four Delegates and not more than eight Delegates in any one district.

(d) Districts for membership in the House of Delegates shall be established by law, based substantially upon population, and as compact and contiguous as reasonably possible.

(e) All Delegates in a county which has districts shall be residents of and elected from their respective districts, and they shall not be elected from the entire county; and all Delegates in Baltimore City shall be residents of and elected from their respective districts, and they shall not be elected at large from Baltimore City. The Delegates shall have qualifications and residential requirements as provided in Section 9 of Article 3 of the Constitution of Maryland.

(f) The offices of Delegates here specified are created in the several counties, Baltimore City, and districts as

this subheading is applied from time to time; and they shall be filled from time to time under the regular provisions for election or replacement.

42C.

(a) Beginning in the year 1970 and continuing thereafter, within one month after the publication of any Federal decennial census the Governor by proclamation shall announce the population determined in the census for each county and for Baltimore City. In the proclamation the Governor also shall announce the total number of Delegates to which each county and Baltimore City is entitled, according to the formulas and provisions contained in this subheading.

(b) At a session of the General Assembly after the proclamation by the Governor, the General Assembly by statute shall fix the boundary lines of districts if they are required under this subheading in any county or Baltimore City; or, if a change in existing districts is necessary or desirable, these boundary lines shall be fixed agreeably to the requirements and specifications of this subheading for districts. If this statute is not enacted by the General Assembly and signed by the Governor by the day which is five months prior to the next ensuing primary election at which candidates for the House of Delegates will be nominated, the Governor, agreeably to the other provisions of this subheading and by proclamation issued and published not later than thirty days after the beginning of this five-month period, shall fix the boundary lines of districts in any county or Baltimore City; and the boundaries of the several districts as thus fixed by the Governor shall be the boundaries until they are changed pursuant to the provisions of this subheading or by the General Assembly prior to the next or any subsequent primary election for members of the House of Delegates.

(c) At the time of the next regular election for members of the General Assembly (including primary and general elections) after the district lines are set by statute or by proclamation of the Governor, the number of Delegates

specified in the statute or proclamation shall be elected for each county, and the number provided for each legislative district that may be created and described in the statute or proclamation shall be elected. The apportionment thus made shall continue until changed under this subheading. Nothing in the proclamation, statute or proclamation, or election affects the election, tenure, powers, or duties of Delegates in office at the time these events occur, for the remainder of the terms in which they are then serving.

(d) The foregoing provisions of this section do not apply, and the following provisions of this section do apply, to the elections for members of the House of Delegates in the years 1966 and 1970.

(e) The primary and general elections for members of the House of Delegates held in the years 1966 and 1970 shall be based upon a statute enacted by the General Assembly which announces the population for each county and Baltimore City, as determined in the regular Federal decennial census in the year 1960. The number of Delegates to which each county and Baltimore City is entitled, the number of districts in any county or Baltimore City, and the boundaries of these districts shall be for the elections in the year 1966 and in the year 1970 as fixed by statute of the General Assembly enacted by the General Assembly and signed by the Governor not later than the day which is five months prior to the next ensuing primary election at which candidates for the House of Delegates will be nominated. If this statute to fix the number of Delegates and the number of districts and to establish boundaries for the several districts is not enacted by the General Assembly and signed by the Governor by the day which is five months prior to the next ensuing primary election at which candidates for the House of Delegates will be nominated, the Governor, agreeably to the other provisions of this subheading and by proclamation issued and published not later than thirty days after the beginning of this five-month period, shall fix the number of Delegates to which each county and Baltimore City is entitled, the

number of districts in any county or Baltimore City, and the boundaries of these districts; and these numbers and boundaries as fixed by the Governor shall remain as fixed until they are changed pursuant to the provisions of this subheading or by the General Assembly prior to the next or any subsequent primary election for members of the House of Delegates. Nothing in this subsection affects the election, tenure, powers, or duties of Delegates in office at the time these events occur, for the remainder of the terms in which they are then serving. This subsection becomes fully effective when the members of the House of Delegates have been elected in November, 1966, and in November, 1970, and thereafter have qualified for and entered upon their terms of office. This subsection does not apply, and subsections (a), (b), and (c) of this section do apply (if still effective), to elections for members of the House of Delegates in any year after 1970.

42D.

(a) This subheading prevails to the extent of any inconsistency over Sections 2, 4, 5, 6, 9, and 13 of Article 3 of the Constitution of Maryland.

(b) This subheading provides for establishing the membership of and for fixing certain districts for representation in the House of Delegates of Maryland, until such time as it is superseded in whole or in part by an amendment to the Constitution of Maryland. With no further action required by the General Assembly, and to the extent of any conflict, this subheading is no longer effective, in whole or in part, as of the effective date of any such amendment of the Constitution of Maryland; except that nothing thereby affects the election, tenure, powers, or duties of Delegates in office at the time these events occur, for the remainder of the terms in which they are then serving.

Senate

42E.

(a) The membership of the Senate consists of forty-three (43) Senators. The State is divided into sixteen

State Senatorial Districts composed and to elect the number of Senators as follows:

(1) District 1—Garrett, Allegany, and Washington Counties—3 Senators.

(2) District 2—Frederick and Carroll Counties—2 Senators.

(3) District 3—Montgomery and Howard Counties—5 Senators.

(4) District 4—Prince George's County—5 Senators.

(5) District 5—Charles and St. Mary's Counties—1 Senator.

(6) District 6—Anne Arundel and Calvert Counties—3 Senators.

(7) District 7—Baltimore City, First Legislative District—2 Senators.

The First Legislative District is composed of the area within wards one, two, three, four, and five; and within the area of precincts seven to fourteen inclusive, in ward number six; and in the area within the precincts one to twenty-nine, inclusive of ward number twenty-six; and of those portions of precincts thirty-seven and thirty-eight of ward number twenty-six which are situated southeasterly from the center line of Sinclair Lane; and of the area within precincts thirty-nine of the twenty-sixth ward.

(8) District 8—Baltimore City, Second Legislative District—2 Senators.

The Second Legislative District is composed of the area within precinct one to six, inclusive, of ward number six; and of the area within ward number 7; and of the area within precincts two and three and within precincts fourteen to twenty-six, inclusive, in ward number eight; and of the area within precincts six to twenty-two, inclusive, of ward number nine; and of the area within precinct twenty-five of ward number nine; and of the area within wards numbers 10, 11, and 12; and of the area within pre-

cincts one, two, and twelve of ward number fourteen; and of the area within precincts thirty to thirty-four, inclusive, of ward number twenty-six.

(9) District 9—Baltimore City, Third Legislative District—2 Senators.

The Third Legislative District is composed of the area within precinct one and of precincts four to thirteen, inclusive, of ward number eight; and of the area within precincts one through five, inclusive, and of precincts twenty-three, twenty-four, and of precincts twenty-six to thirty-one, inclusive, of ward number nine; and of the area within precincts thirty-five and thirty-six in ward number twenty-six; and of those portions of precincts thirty-seven and thirty-eight in ward number twenty-six lying northwesterly of the center line of Sinclair Lane; and of precincts forty, forty-one, forty-two, forty-three, forty-four, and forty-five in ward number twenty-six; and of the area within precincts one to seventy-seven, inclusive, of ward number twenty-seven.

(10) District 10—Baltimore City, Fourth Legislative District—2 Senators.

The Fourth Legislative District is composed of the area within ward thirteen; and of the area within precincts three to eleven, inclusive of ward fourteen; and of the area within precincts four, four-a, four-b, four-c, ten, and seventeen to forty-two, inclusive, in ward fifteen; and of the area within precincts one to seven, inclusive, and within eighteen to twenty-five, inclusive, of ward sixteen; and of the area within ward seventeen; and of the area within precincts ninety-five, ninety-six, ninety-seven and ninety-nine of ward twenty-seven.

(11) District 11—Baltimore City, Fifth Legislative District—2 Senators.

The Fifth Legislative District is composed of the area within precincts one, two, three, five to nine, inclusive, and eleven to sixteen, inclusive, in ward fifteen; and of the area within precincts eight to seventeen, inclusive.

in ward sixteen, and of the area within precincts one to twelve, inclusive, and within precincts sixteen, seventeen, and eighteen, and within precincts twenty-one to twenty-five, inclusive, of ward number twenty; and of the area within precincts seventy-eight to ninety-four, inclusive, and of precincts ninety-eight and of precincts one hundred to one hundred five, inclusive of ward number twenty-seven; and of the area within ward number twenty-eight.

(12) District 12—Baltimore City, Sixth Legislative District—2 Senators.

The Sixth Legislative District is composed of the area within ward eighteen and ward nineteen and of the area within precincts thirteen, fourteen, fifteen, nineteen, and twenty in ward twenty and of the area within wards twenty-one, twenty-two, twenty-three, twenty-four and twenty-five.

(13) District 13—Baltimore County—7 Senators.

(14) District 14—Harford County—1 Senator.

(15) District 15—Cecil, Kent, Queen Anne's, Caroline and Talbot Counties—2 Senators.

(16) District 16—Dorchester, Wicomico, Worcester and Somerset Counties—2 Senators.

(A-1) Any Senatorial District which is entitled under the provisions of this section to elect more than two Senators shall be divided into subdistricts. Each subdistrict shall elect a number of Senators which shall be not more than two Senators from each subdistrict. If the subdistricting of any Senatorial District has not been accomplished by April 1, 1966 by Act of the General Assembly, the Governor of Maryland by proclamation shall forthwith determine the number and boundaries of the subdistricts, but not later than May 1, 1966.

(A-2) In any Senatorial District comprising more than one county and having two Senators, not more than one resident of any one county may be nominated by one

political party at the primary election, unless the population of that one county exceeds the population of all the remaining counties in the district in the aggregate. Provided that any Senatorial candidate must be voted upon at large within the entire district at the primary election. The provisions of this subsection shall not apply to general elections for the office of State Senator.

(b) The regular elections in the years 1966 and 1970, for four year terms in the Senate of Maryland beginning respectively in the month of January, 1967, and in the month of January, 1971, shall be on the basis of the Districts and number of Senators provided in Subsection (a) of this section. The same Districts and number of Senators shall apply to subsequent elections and terms unless they are changed pursuant to the provisions of this section which follow.

(c) No person shall be eligible as a Senator who at the time of his election is not a citizen of the State of Maryland, and who has not resided therein for at least three years next preceding his election, and the last year thereof, in the State Senatorial District which he may be chosen to represent, if such Senatorial District shall have been so long established; and if not, then in a portion of a county or of Baltimore City which is a part of the State Senatorial District; and no person shall be eligible as a Senator unless he shall have attained the age of twenty-five years at the time of his election.

(d) This section establishes the Districts and membership of the Senate of Maryland until such time as it is superseded by an amendment for that purpose to the Constitution of Maryland. Automatically, and with no further action required by the General Assembly, it is repealed and no longer in force as of the effective date of such an amendment to the Constitution; except that such repeal does not affect the election, tenure, powers, privileges, and duties of any member of the Senate in office at the time of the repeal, for the remainder of the term for which he has been elected.

(e) This subheading prevails to the extent of any inconsistency over Sections 2, 4, 9, and 13 of Article 3 of the Constitution of Maryland.

(f) If an amendment to the Constitution of the United States is proposed and ratified providing in substance that one House of a State Legislature may be established and composed of representatives chosen on a ground, or grounds, other than that of population, or if the Congress of the United States by statute modifies the jurisdiction of the Federal courts of the United States so that the Courts have no jurisdiction in cases involving the membership and districts of one House of a State Legislature, this subheading is no longer effective, and the membership and composition of the Senate of Maryland shall be as on January 1, 1965. At that ime, if it is at least ninety days prior to the next ensuing primary election at which nominees for the Senate of Maryland are to be chosen, and with no further action required by the General Assembly of Maryland, this subheading is no longer effective; except that nothing thereby effects the election, tenure, powers, or duties of the Senators in office at the time these events occur, for the remainder of the terms in which they are then serving. If the amendment to the Constitution of the United States is ratified less than ninety days prior to the next ensuing primary election in the State of Maryland at which nominees for the Senate of Maryland are to be chosen, or if the statute of the Congress becomes effective less than ninety days prior to that primary election, the primary election and the next ensuing general election shall be conducted under the provisions of this subheading, and at the primary and general elections for the Senate of Maryland occurring four years later, and thereafter, the membership and composition of the Senate of Maryland shall be as on January 1, 1965.

SEC. 2. *And be it further enacted,* That if a proposed amendment to the Constitution of Maryland, enacted by the General Assembly at the Special Session of 1965 and concerning the subject matter of this Act (in addition to certain other matters) is submitted to the qualified voters

of the State for adoption or rejection at the regular election in the month of November, 1966, and fails of adoption by the qualified voters of Maryland, this Act is repealed as of the date of the Governor's proclamation as to the rejection of the proposed amendment to the Constitution, with no further action required by the General Assembly; but nothing in this repeal affects the election, tenure, powers, or duties of Delegates and Senators in office at the time the repeal takes effect, for the remainder of the terms in which they are then serving.

SEC. 3. *And be it further enacted,* That if any word, phrase, clause, section, or other provision of this Act is declared unconstitutional or invalid by a court of final appeal, the unconstitutionality or invalidity shall not affect any other word, phrase, clause, section, or provision of this Act, and to this end the provisions of this Act are declared severable.

SEC. 4. *And be it further enacted,* That this Act shall take effect June 1, 1966.

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## APPENDIX B — OPINIONS AND DECREES BELOW

### II.

### In the Circuit Court for Anne Arundel County

### OPINION

In August 1960, the Maryland Committee for Fair Representation, et al., hereinafter referred to as Plaintiffs, brought this action against J. Millard Tawes, Governor of Maryland, et al., hereinafter referred to as Defendants, challenging the apportionment of the Maryland General Assembly. The Plaintiffs alleged that the apportionment of the General Assembly, pursuant to Article III, Sections 2 and 5, of the Maryland Constitution, as amended, discriminated against the inhabitants of the more populous areas of the State by according them substantially less representation than that given to persons residing in other areas of the State. The Plaintiffs contended that the alleged legislative malapportionment violated the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

On 21 February 1961, this Court sustained Defendants' demurrers and dismissed the complaint without leave to amend. On 25 April 1962, the Court of Appeals reversed the order and remanded the case for a hearing on the merits. 228 Md. 412, 180 A. 2d 656. Pursuant thereto, this Court held on 24 May 1962 that the apportionment of the Maryland House of Delegates invidiously discriminated against the citizens of Baltimore, Montgomery and Prince George's Counties, and that therefore Article III, Section 5 of the Maryland Constitution, which apportions seats in the House of Delegates, violates the Equal Protection Clause of the Fourteenth Amendment. No formal determination was made as to the validity of senatorial apportionment.

Subsequently, the Maryland General Assembly, called into special session by the Governor in May 1962, enacted temporary "stop-gap" legislation reapportioning the House of Delegates by allocating 19 additional seats to the more populous areas of the State.

Senatorial apportionment remaining inviolate, an appeal was taken by the Plaintiffs requesting that its constitutionality be determined. As a result, the Court of Appeals, on 8 June 1962, ordered the case remanded for a decision on the validity of Article III, Section 2 of the Maryland Constitution which provides for senatorial apportionment on a geographical basis. In a decision rendered on 28 June 1962, this Court upheld the apportionment of the Maryland Senate, placing considerable reliance on a comparison of that body with the United States Senate. On 23 July 1962, the Court of Appeals affirmed that decision in a per curiam order and, on 25 September 1962, filed its opinion. 229 Md. 406, 184 A. 2d 715.

Existing senatorial apportionment having been upheld, the November 1962 election of senators was conducted pursuant thereto, and delegates were elected under the scheme provided by the 1962 legislation.

Notice of appeal to the Supreme Court of the United States was filed, and that Court noted probable jurisdiction on 10 June 1963. 374 U.S. 804, 10 L. ed. 2d 1029,

83 S. Ct. 1691. The Supreme Court heard argument on 13 and 14 November 1963 and rendered a decision on 15 June 1964, reversing the decision of the Court of Appeals. 377 U.S. 656, 12 L. ed. 2d 595, 84 S. Ct. 1442. Chief Justice Warren, speaking for six members of the Court, delivered the majority opinion wherein it was held that the validity of the apportionment of both houses was before the Court, and that neither house was apportioned sufficiently on a population basis to be constitutionally sustainable.

The Court stated that the proper subject for judicial focus in a legislative apportionment controversy is the overall representation accorded the State's voters in both houses of a bicameral legislature. As a result, it was held that, regardless of existing House apportionment, the overall scheme of legislative representation in Maryland could not be sustained under the Equal Protection Clause since gross disparities from population-based representation existed in the apportionment of the Maryland Senate (App. I). The Court further held that any reliance on the federal analogy, as well as considerations of history and tradition, could not provide sufficient justification for substantial deviations from population-based representation in both houses of the General Assembly.

In remanding the case to the Court of Appeals, the Supreme Court stated at page 676:

> "Since primary responsibility for legislative apportionment rests with the legislature itself, and since adequate time exists in which the Maryland General Assembly can act, the Maryland Courts need feel obliged to take further affirmative action only if the legislature fails to enact a constitutionally valid state legislative apportionment scheme in a timely fashion after being afforded a further opportunity by the courts to do so. However, under no circumstances should the 1966 election of members of the Maryland Legislature be permitted to be conducted pursuant to the existing or any other unconstitutional plan. We therefore reverse the judgment of the Maryland Court

of Appeals, and remand the case to that Court for further proceedings not inconsistent with the views stated here and in our opinion in *Reynolds v. Sims*."

The case having been returned to the Court of Appeals, it was remanded to this Court on 23 September 1964, with directions to retain jurisdiction and to take affirmative action upon the application of any of the parties in the event the Maryland Legislature should fail to enact a constitutionally valid State legislative apportionment scheme prior to the 1966 primary elections.

In its regular 1965 session the Maryland General Assembly failed to enact any apportionment legislation and, as a result, was convened into special session by the Governor on 11 October 1965 for the purpose of enacting such legislation. In seeking to comply with the mandate of the Supreme Court, the Assembly enacted two reapportionment plans, known respectively as Senate Bill No. 5 and Senate Bill No. 8.

On 27 October 1964, the Honorable J. Millard Tawes, Governor of Maryland, signed both measures into law. On that same day, the Attorney General of Maryland, as counsel for the Defendants, filed a "Notice of Compliance and Petition for Final Decree" herein, asking this Court to determine whether one or both of the statutes met the requisite constitutional standards and further to issue a final decree to that effect.

Thereafter, the Plaintiffs filed an answer admitting the constitutionality of Senate Bill 5, but challenging the constitutionality of Senate Bill 8.

Subsequently, the sponsors of Senate Bill 8, Honorable Harry R. Hughes and Honorable John-Clarence North, members of the Maryland Senate, as Intervenors, were permitted to intervene for the purpose of arguing the constitutionality of Senate Bill 8.

Both bills provide for the same state-wide representation in the House of Delegates, the constitutionality of which has not been contested. Considerable difference

exists, however, in the schemes for senatorial apportionment provided by the two measures.

Under Senate Bill 5 the Senate would be divided into 16 senatorial districts from which 43 senators would be elected, each district electing at least one senator. Whereas, under Senate Bill 8, the State would be divided into 29 senatorial districts from which 53 senators would be elected, each district likewise electing at least one senator.

Senate Bill 8 is a most unusual legislative measure in that it provides the following in Section 4 of the Bill:

> "And be it further enacted, that in the event this act shall be declared valid by the Court of Appeals of Maryland, then Chapter ..... (Senate Bill No. 5) as enacted by the General Assembly at the special session of October 1964 shall not become effective and the Attorney General of Maryland is hereby directed to promptly request a judicial determination of this act by the appropriate legal procedure."

In *Maryland Committee v. Tawes*, 377 U.S. 656, 12 L. ed. 2d 595, 84 S. Ct. 1442, the Court held that it is impossible to decide upon the validity of the apportionment of one house of the Maryland General Assembly in abstract. The Court stated at page 673:

> "Rather, the proper, and indeed indispensable, subject for judicial focus in a legislative apportionment controversy is the overall representation accorded to the State's voters, in both houses of a bicameral state legislature."

Since both bills provide for the same representation in the House of Delegates, a determination of the constitutionality of that scheme is logically a prerequisite to any consideration of senatorial apportionment. The proposed House apportionment provides for a 142-member House. Each of the 29 political subdivisions would receive a minimum of one delegate, the remaining 113 delegates to be apportioned by the mathematical formula of equal

proportions. The ideal population per delegate under such a scheme is 21,836. An examination of the proposed realignment shows that in 132 of the 142 House seats, a variance of less than 15% from that quotient would exist. Of the 10 seats which would exceed the 15% figure, the most serious would involve a deviation of 36%. Population per delegate would range from 15,481 in Kent County to 29,666 in Dorchester County, establishing a maximum disparity of less than 2 to 1 (App. II). The Supreme Court, in *Reynolds v. Sims,* supra, recognized that some divergences from population-based representation are permissible in either or both houses of a bicameral state legislature so long as they are the result of legitimate considerations incident to the effectuation of a rational state policy.

Of considerable significance is the fact that under this proposal the 19 least populous counties and the first, sixth, fourth, fifth and third legislative districts of Baltimore City, with 49.5% of the State's population would elect 71 delegates or 50% of the House, while the 4 largest suburban counties and the second district of Baltimore City, with 50.5% of the State's population would elect the remaining 71 delegates, likewise comprising 50% of the House. In the same vein, the 5 subdivisions having 75.3% of the State's population would elect 106 delegates or 74.7% while the remaining 19 subdivisions, with 24.7% of the population would elect 36 delegates or 25.3% of the membership of the House.

It would be difficult to conceive a plan which would more equitably apportion that body while still according individual political subdivisions some independent representation. While a few noticeable disparities exist, they are clearly the exception rather than the rule and are, in the opinion of this Court, the result of legitimate consideration incident to the effectuation of a rational state policy.

The proposed apportionment of the Maryland House of Delegates is, therefore, based sufficiently on population to be constitutionally sustainable, and is in no way violative

of the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

It is now incumbent on this Court to determine the constitutionality of the proposed senatorial apportionment schemes in light of the overall representation to be accorded under each. The General Assembly has provided that the constitutionality of Senate Bill 8 be determined first.

Senate Bill 8 provides for a 53-member Senate to be elected from 29 senatorial districts. Each political subdivision would elect a minimum of 1 senator, the remainder to be apportioned on a population basis. The result would be the creation of senatorial districts wherein the population per senator would range from 15,481 in Kent County to 91,219 in Washington County. Under such a plan 36.7% of the State's population could theoretically elect a controlling majority of 27 senators. It is likewise significant that of the 29 proposed districts only 4 would involve a variance of less than 15% from the ideal population norm of 57,504, while other variances would range as high as 74% (App. III).

The disparities in population-per-senator figures are perhaps the most offensive characteristic of the Bill. The vote of a citizen of Kent or Calvert County is given 3½ times the weight of the vote of a citizen of Montgomery. Between Kent and Prince George's Counties the ratio is 4 to 1; between Kent and Anne Arundel Counties the ratio is 4½ to 1; between Calvert County and Baltimore City, the ratio is almost 5 to 1; between Kent and Charles Counties the ratio is 2 to 1; between Calvert and Wicomico Counties the ratio is 3 to 1; between Kent and Cecil Counties the ratio is 3 to 1; between Calvert and Dorchester Counties the ratio is 2 to 1; between Kent and St. Mary's Counties the ratio is more than 2 to 1, and, most significantly, the ratio between Kent County and Washington County approaches 6 to 1.

In attempting to justify these radical departures from population-based representation much has been made of the Maryland General Assembly's somewhat unique acti-

vity involving local legislation. The Supreme Court in *Reynolds v. Sims*, supra, recognized that factors such as local legislation may be considered in formulating an effective and rational apportionment scheme. Notwithstanding this recognition, the Court's mandate has remained clear and unequivocal. The Court stated at page 580:

> "Local governmental entities are frequently charged with various responsibilities incident to the operation of state government. *In many states much of the legislature's activity involves the enactment of so-called local legislation, directed only to the concerns of particular political subdivisions.* And a State may legitimately desire to construct districts along political subdivision lines to deter the possibilities of gerrymandering. *However, permitting deviations from population based representation does not mean that each local governmental unit or political subdivision can be given separate representation, regardless of population.* Carried too far, a scheme of giving at least one seat in one house to each political subdivision (for example, to each county) could easily result, in many States, in a total subversion of the equal-population principle in that legislative body. This would be especially true in a State where the number of counties is large and many of them are sparsely populated, and the number of seats in the legislative body being apportioned does not significantly exceed the number of counties. Such a result, we conclude, would be constitutionally impermissible. And careful judicial scrutiny must of course be given, in evaluating state apportionment schemes to the character as well as the degree of deviations from a strict population basis. *But if, even as a result of a clearly rational state policy of according some legislative representation to political subdivisions, population is submerged as the controlling consideration in the apportionment of seats in the particular legislative body, then the right of all of the State's citizens to cast an effective*

*and adequately weighted vote would be unconstitutionally impaired.*" (E. S.)

Likewise, the Court in *Roman v. Sincock*, 377 U.S. 695, 12 L. ed, 2d 620, 84 S. Ct. 1462, recognizing that it is neither practicable nor desirable to establish rigid mathematical standards for evaluating the constitutionality of apportionment schemes, held at page 710:

"Rather, the proper judicial approach is to ascertain whether, under the particular circumstances existing in the individual State whose legislative apportionment is at issue, there has been a faithful adherence to a plan of population-based representation, with such *minor deviations* only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination." (E. S.)

This Court fails to see any merit in the argument that the Maryland General Assembly's activity involving local legislation is a consideration sufficient to justify the deviations from population-based representation embodied in Senate Bill 8. Major deviations being the rule rather than the exception, population is clearly submerged as the controlling consideration, while arbitrary and discriminatory considerations control. To give each political subdivision a representative in the Maryland Senate is hardly sufficient consideration for allowing one citizen's vote to be multiplied by 2, 3 or 5 while the vote of a citizen in another area of the State is to be counted at face value.

It has been suggested that should it be determined that Senate Bill 8 does not precisely conform to the requisite population standard, it should be sustained as an interim plan. Again, the mandate of the Supreme Court is clear. In *Md. Comm. v. Tawes,* supra, the Court stated at page 676:

"However, under no circumstances should the 1966 election of members of the Maryland Legislature be

permitted to be conducted pursuant to the existing or any other unconstitutional plan."

Senate Bill 8 is clearly violative of the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States and is not constitutionally sustainable as either an interim or permanent apportionment plan.

Senate Bill 8 having been deemed unconstitutional, a determination must now be made as to the constitutionality of the senatorial apportionment scheme embodied in Senate Bill 5.

Senate Bill 5 provides for a 43-member Senate to be elected from 16 senatorial districts. While an ideal unit of population would be 72,109, the population per senator would range from 60,749 to 85,207. Under this bill, 47.8% of the State's population would be required to elect a majority of 22 senators.

In 4 of the 16 proposed districts, the population-per-senator figure would involve a variance of more than 15% from the ideal population norm. The variances involved would be 15.1%, 15.4%, 15.8% and 18.2%. The variances of 15.1% and 18.2% involve the Second and Third Districts of Baltimore City, and it is significant that when Baltimore City is viewed as a whole a variance of only 8.5% exists (App. IV).

The Supreme Court in *Reynolds v. Sims*, supra, at page 577, held that:

> "The Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable. We realize that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters. Mathematical exactness or precision is hardly a workable constitutional requirement."

While a few small disparities exist, they are clearly the exception rather than the rule and are the result of legitimate considerations incident to the effectuation of a rational state policy in that they preserve existing subdivision boundaries as district boundaries and thereby discourage gerrymandering.

The proposed apportionment of the Maryland Senate as embodied in Senate Bill 5 is, therefore, based sufficiently on population to be constitutionally sustainable, and is in no way violative of the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

For the reasons stated in this Opinion the Court will sign a decree, when submitted by counsel, declaring Senate Bill 8 unconstitutional, and further declaring Senate Bill 5 constitutional.

MATTHEW S. EVANS,
Judge.

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## APPENDIX I

POPULATION OF MARYLAND COUNTIES — 1960

| | | | |
|---|---|---|---|
| Allegany | 84,169 | Harford | 76,722 |
| Anne Arundel | 206,634 | Howard | 36,152 |
| Baltimore | 492,428 | Kent | 15,481 |
| Baltimore City | 939,024 | Montgomery | 340,928 |
| Calvert | 15,826 | Prince George's | 357,395 |
| Caroline | 19,462 | Queen Anne's | 16,569 |
| Carroll | 52,785 | St. Mary's | 38,915 |
| Cecil | 48,408 | Somerset | 19,623 |
| Charles | 32,572 | Talbot | 21,578 |
| Dorchester | 29,666 | Washington | 91,219 |
| Frederick | 71,930 | Wicomico | 49,050 |
| Garrett | 20,420 | Worcester | 23,733 |

## APPENDIX II

REAPPORTIONMENT OF HOUSE OF DELEGATES — 142 MEMBERS BY MATHEMATICAL FORMULA OF EQUAL PROPORTIONS

(SENATE BILLS 5 AND 8)

| *County* | *1960 Census* | *No. of Delegates* | *Population Per Delegate* | *% Variance Unit of Population* |
|---|---|---|---|---|
| Allegany | 84,169 | 4 | 21,042 | — 4 |
| Anne Arundel | 206,634 | 9 | 22,959 | + 5 |
| Baltimore | 492,428 | 22 | 22,383 | + 3 |
| Baltimore City: | | | | |
| District No. 1 | 126,611 | 6 | 21,102 | — 3 |
| District No. 2 | 169,308 | 8 | 21,164 | — 3 |
| District No. 3 | 167,163 | 8 | 20,895 | — 4 |
| District No. 4 | 159,385 | 7 | 22,769 | + 4 |
| District No. 5 | 162,437 | 7 | 23,205 | + 6 |
| District No. 6 | 154,120 | 7 | 22,017 | + 1 |
| Calvert | 15,826 | 1 | 15,826 | —28 |
| Caroline | 19,462 | 1 | 19,462 | —11 |
| Carroll | 52,785 | 2 | 26,393 | +21 |
| Cecil | 48,408 | 2 | 24,204 | +11 |
| Charles | 32,572 | 2 | 16,286 | —25 |
| Dorchester | 29,666 | 1 | 29,666 | +36 |
| Frederick | 71,930 | 3 | 23,977 | +10 |
| Garrett | 20,420 | 1 | 20,420 | — 7 |
| Harford | 76,722 | 4 | 19,181 | —12 |
| Howard | 36,152 | 2 | 18,076 | —17 |
| Kent | 15,481 | 1 | 15,481 | —28 |
| Montgomery | 340,928 | 16 | 21,308 | — 2 |
| Prince George's | 357,395 | 16 | 22,337 | + 2 |
| Queen Anne's | 16,569 | 1 | 16,569 | —24 |
| St. Mary's | 38,915 | 2 | 19,458 | —11 |
| Somerset | 19,623 | 1 | 19,623 | —10 |
| Talbot | 21,578 | 1 | 21,578 | + 1 |
| Washington | 91,219 | 4 | 22,805 | + 4 |
| Wicomico | 49,050 | 2 | 24,525 | +12 |
| Worcester | 23,733 | 1 | 23,733 | + 9 |
| | 3,100,689 | 142 | | |

Ideal Mathematical Quotient = 21,836

# APPENDIX III

## Reapportionment of Senate

### Senate Bill 8

| *Senatorial District* | *County* | *1960 Census* | *No. of Senators* | *Population Per Senator* | *% Variance Unit of Population* |
|---|---|---|---|---|---|
| 1 | Garrett | 20,420 | 1 | 20,420 | −65 |
| 2 | Allegany | 84,169 | 1 | 84,169 | +44 |
| 3 | Washington | 91,219 | 1 | 91,219 | +56 |
| 4 | Frederick | 71,930 | 1 | 71,930 | +23 |
| 5 | Carroll | 52,785 | 1 | 52,785 | −10 |
| 6 | Howard | 36,152 | 1 | 36,152 | −38 |
| 7 | Montgomery | 340,928 | 6 | 56,821 | − 3 |
| 8 | Prince George's | 357,395 | 6 | 59,566 | + 2 |
| 9 | Charles | 32,572 | 1 | 32,572 | −44 |
| 10 | St. Mary's | 38,915 | 1 | 38,915 | −34 |
| 11 | Calvert | 15,826 | 1 | 15,826 | −73 |
| 12 | Anne Arundel | 206,634 | 3 | 68,878 | +18 |
| | Baltimore City: | | | | |
| 13 | District No. 1 | 126,611 | 2 | 63,306 | + 8 |
| 14 | District No. 2 | 166,057 | 2 | 83,029 | +42 |
| 15 | District No. 3 | 170,414 | 2 | 85,207 | +46 |
| 16 | District No. 4 | 159,385 | 2 | 79,693 | +36 |
| 17 | District No. 5 | 162,437 | 2 | 81,219 | +39 |
| 18 | District No. 6 | 154,120 | 2 | 77,060 | +32 |
| 19 | Baltimore | 492,428 | 7 | 70,347 | +20 |
| 20 | Harford | 76,722 | 1 | 76,722 | +31 |
| 21 | Cecil | 48,408 | 1 | 48,408 | −17 |
| 22 | Kent | 15,481 | 1 | 15,481 | −74 |
| 23 | Caroline | 19,462 | 1 | 19,462 | −67 |
| 24 | Queen Anne's | 16,569 | 1 | 16,569 | −72 |
| 25 | Talbot | 21,578 | 1 | 21,578 | −63 |
| 26 | Dorchester | 29,666 | 1 | 29,666 | −49 |
| 27 | Wicomico | 49,050 | 1 | 49,050 | −16 |
| 28 | Worcester | 23,733 | 1 | 23,733 | −59 |
| 29 | Somerset | 19,623 | 1 | 19,623 | −67 |
| | | 3,100,689 | 53 | | |

Ideal Mathematical Quotient = 58,504

36.7% of the State's population could elect a majority of 27.

# APPENDIX IV

## Reapportionment of Senate

## Senate Bill 5

| Senatorial District | County | 1960 Census | No. of Senators | Population Per Senator | % Variance Unit of Population |
|---|---|---|---|---|---|
| 1 | Garrett, Allegany, Washington | 195,808 | 3 | 65,269 | — 9.5 |
| 2 | Frederick, Carroll | 124,715 | 2 | 62,358 | —13.5 |
| 3 | Montgomery, Howard | 377,080 | 5 | 75,416 | + 4.6 |
| 4 | Prince George's | 357,395 | 5 | 71,479 | — 0.9 |
| 5 | Charles, St. Mary's | 71,487 | 1 | 71,487 | — 0.9 |
| 6 | Anne Arundel, Calvert | 222,460 | 3 | 74,153 | + 2.8 |
| | Baltimore City: | (939,024) | (12) | (78,252) | (+ 8.5) |
| 7 | District No. 1 | 126,611 | 2 | 63,306 | —12.2 |
| 8 | District No. 2 | 166,057 | 2 | 83,029 | +15.1 |
| 9 | District No. 3 | 170,414 | 2 | 85,207 | +18.2 |
| 10 | District No. 4 | 159,385 | 2 | 79,693 | +10.5 |
| 11 | District No. 5 | 162,437 | 2 | 81,219 | +12.6 |
| 12 | District No. 6 | 154,120 | 2 | 77,060 | + 6.9 |
| 13 | Baltimore County | 492,428 | 7 | 70,347 | — 2.4 |
| 14 | Harford | 76,722 | 1 | 76,722 | + 6.4 |
| 15 | Cecil, Kent, Queen Anne's, Caroline & Talbot | 121,498 | 2 | 60,749 | —15.8 |
| 16 | Dorchester, Wicomico, Worcester & Somerset | 122,072 | 2 | 61,036 | —15.4 |
| | | 3,100,689 | 43 | | |

Ideal Mathematical Quotient = 72,109

47.8% of the State's population could elect a majority of 22.

## DECREE

The above entitled cause having come on for hearing, the briefs and memoranda of all parties having been read, argument having been heard and considered, it is now, this 29th day of Dec. 1965, ORDERED, ADJUDGED AND DECREED:

1. That Senate Bill No. 5 of the Extraordinary Session of the General Assembly of Maryland of October 11, 1965, is valid and constitutional.

2. That Senate Bill No. 8 of the Extraordinary Session of the General Assembly of Maryland of October 11, 1965 is unconstitutional as violative of the Fourteenth Amendment of the Constitution of the United States and same is, therefore, null, void and ineffective.

3. That this Court will retain jurisdiction in this proceeding at least until the first day of June, 1966, at which time any of the parties hereto may file a petition for a final order dismissing this proceeding, or for such other relief as may be appropriate under the circumstances then prevailing.

/s/ MATTHEW S. EVANS

Matthew S. Evans

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In The
Court of Appeals of Maryland
No. 487
September Term, 1965

## PER CURIAM ORDER

For reasons to be stated in an opinion to be hereinafter filed, it is ORDERED by a majority of the Court of Appeals of Maryland, this 11th day of January, 1966, that the decree appealed from be, and it is hereby, affirmed.

/s/ STEDMAN PRESCOTT,
Chief Judge.

In The Court of Appeals of Maryland
No. 487
September Term, 1965

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Harry R. Hughes, et al.
v.
Maryland Committee for Fair Representation, et al.

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Prescott, C.J.
Hammond
Horney
Marbury
Oppenheimer
Barnes
McWilliams,
JJ.

---

Opinion by Prescott, C.J. Horney and Barnes, JJ. dissent.

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Filed: March 2nd, 1966.

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The importance of the result of our *per curiam* order herein, where a majority of the Court affirmed the holdings of the trial judge, would justify an opinion of very considerable length setting forth the reasons therefor. However, such a course is not necessary or desirable, and will not be followed. Although the subject of apportionment of State Legislatures has seemingly been the subject of more legal opinions[1] and law review articles[2] than any other single legal theme since the decision in *Baker*

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[1] Within nine months after *Baker v. Carr, infra,* litigation relative to apportionment had been begun in some 34 States.

[2] They run anywhere from "Courts in the Thicket," Hanson, 12 Amer. U. L. Rev. 51, to "Political Thickets and Crazy Quilts: etc.," McKay, 61 Mich. L. Rev., 645.

*v. Carr*, 369 U.S. 186 (1962) wherein the Supreme Court decided to place the apportionment of State Legislatures under the supervision of the Federal (as well as the State) Courts, the Supreme Court, which is the ultimate interpreter of the United States Constitution, has, itself, spoken in plain terms on the question presently involved. Hence, if we analyze the great number of state and lower federal court decisions, as well as the numerous law review articles, it would simply result in useless repetition and consumption of space, for all of them aim at trying to discover what the Supreme Court has said, and probably will say, on the subject. The answers to the questions herein involved are contained in the Supreme Court's opinions in the appeal in this case, *Maryland Committee, etc. v. Tawes*, 377 U.S. 656, and *Reynolds v. Sims*, 377 U.S. 533.

Two questions are presented: (1), Does Senate Bill 8 of the Acts of Assembly, Extraordinary Session 1965, constitutionally apportion the membership of the State Senate; and (2), If it does not, is Senate Bill 5 free of constitutional infirmity, because it apportions the membership of both the State Senate and the House of Delegates in a constitutionally permissible manner?

We set forth here a bare outline of the history of the case, because a detailed account thereof may be found in our two previous opinions (228 Md. 412 and 229 Md. 406) and the opinion of the Supreme Court on appeal thereto (377 U.S. 656). (There is a slight typographical error on page 663 where the opinion states this Court split 5-to-3 on its decision. The split was 4-to-3.)

The case originated in 1960 by a bill of complaint filed in the Circuit Court for Anne Arundel County. The plaintiffs alleged that the apportionment of the General Assembly, pursuant to Article IH, §§ 2 and 5, of the Maryland Constitution, discriminated against them as inhabitants and voters in the more populous areas of the State, by according them substantially less representation than that given to persons residing and voting in less populous areas. They requested declaratory and injunctive relief.

In February, 1961, the trial court sustained defendants' demurrers and dismissed the bill. In April of 1962, we reversed (splitting 5-to-2) and remanded. (228 Md. 412.) On May 24, 1962, the trial court held that the House of Delegates was unconstitutionally apportioned, but made no finding with reference to the Senate. The Legislature, called into special session by the Governor in May, 1962, enacted stop-gap legislation allocating 19 additional seats in the House of Delegates to the more populous areas of the State.

As the trial court made no ruling with reference to the apportionment of the Senate, the plaintiffs appealed to this Court. On June 8, 1962, we remanded for a decision on the question. The trial judge concluded that the Senate was constitutionally constituted, and the plaintiffs, again, appealed. This Court, splitting 4-to-3, affirmed. The plaintiffs appealed to the Supreme Court, where the holding was reversed, the Supreme Court holding that the apportionment of both the House of Delegates and the Senate was invidiously discriminatory and, therefore, unconstitutional and illegal. In compliance with the mandate from the Supreme Court, we remanded the case to the trial court with directions to retain jurisdiction and to take affirmative action upon application of any of the parties in the event that the Legislature failed to enact a constitutionally valid apportionment scheme prior to the 1966 primary elections.

At its regular 1965 session, the Legislature passed no reapportionment legislation. As a result thereof, the Governor convened a special session for the purpose of complying with the Supreme Court's mandate that such legislation must must be enacted. Senate Bills 5 and 8 resulted. Senate Bill 8 contains an unusual provision stating that if it "be declared valid by the Court of Appeals of Maryland," then Senate Bill 5 "shall not become effective." The purpose of this provision is, of course, to obtain for the less populous areas the more favorable representation afforded them by Senate Bill 8, if constitutionally permissible. The Governor signed both Bills, after pub-

licly announcing that he thought Senate Bill 8 unconstitutional, but that the Legislature was entitled to have the Court of Appeals pass upon that question first, if the Legislature so desired. This is the posture of the case as it reaches us at this time.

As previously indicated, we find it unnecessary, under the facts here presented, to set forth, elaborately, the applicable law. Although recognizing the impracticability of apportioning on the basis of an exact mathematical formula, in both the appeal in this case and in *Sims, supra,* the Supreme Court held, flatly, that each body of a bicameral state legislature must be apportioned *primarily* on a population consideration. In addition to this holding, the opinion in *Sims,* obligingly, went on to advise as to what probably would, and what probably would not, be constitutionally permissible under certain named circumstances. We quote pertinent excerpts therefrom:

> "* * * *Wesberry* clearly established that the fundamental principle of representative government in this country is one of equal representation for equal numbers of people, without regard to race, sex, economic status, or place of residence within a State."
>
> * * * * * *
>
> "Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests."
>
> * * * * * *
>
> "Diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based upon factors such as race, * * *"
>
> * * * * * *
>
> "And, if a State should provide that the votes of citizens in one part of the State should be given two times, or five times, or 10 times the weight of votes of citizens in another part of the State, it could hardly be contended that the right to vote of those residing in the disfavored areas had not been effec-

tively diluted. It would appear extraordinary to suggest that a State could be constitutionally permitted to enact a law providing that certain of the State's voters could vote two, five, or 10 times for their legislative representatives, while voters living elsewhere could vote only once. And it is inconceivable that a state law to the effect that, in counting votes for legislators, the votes of citizens in one part of the State would be multiplied by two, five, or 10, while the votes of persons in another area would be counted only at face value, could be constitutionally sustainable. Of course, the effect of state legislative districting schemes which give the same number of representatives to unequal numbers of constituents is identical."

* * * * * *

"While the result of a court decision in a state legislative apportionment controversy may be to require the restructuring of the geographical distribution of seats in a state Legislature, the judicial focus must be concentrated upon ascertaining whether there has been any discrimination against certain of the State's citizens which constitutes an impermissible impairment of their constitutionally protected right to vote."

* * * * * *

"But the basic principle of representative government remains, and must remain, unchanged — the weight of a citizen's vote cannot be made to depend on where he lives. Population is, of necessity, the starting point for consideration and the controlling criterion for judgment in legislative apportionment controversies."

* * * * * *

"Logically, in a society ostensibly grounded on representative government, it would seem reasonable that a majority of the people of a State could elect a majority of that State's legislators. To conclude differently, and to sanction minority control of state legislative bodies, would appear to deny majority

rights in a way that far surpasses any possible denial of minority rights that might otherwise be thought to result."

* * * * * *

"We are told that the matter of apportioning representation in a state legislature is a complex and many-faceted one. We are advised that States can rationally consider factors other than population in apportioning legislative representation. We are admonished not to restrict the power of the States to impose differing views as to political philosophy on their citizens. We are cautioned about the dangers of entering into political thickets and mathematical quagmires. Our answer is this: a denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us."

I

Senate Bill 8 provides for a 53-member Senate, to be elected from 29 senatorial districts (with a further provision relative to "subdistricts," not necessary to be considered in detail). One seat is allocated to each of 19 counties (Maryland, of course, has but 23), and the balance are allocated to the other (more populous) counties and the Legislative Districts of Baltimore City. It takes no more than a cursory examination of the Bill to see that its underlying scheme, glaringly, falls far short of the requisites laid down by the Supreme Court to render the provisions of a state apportionment measure constitutionally permissible.

Under the Bill, each district or subdistrict would elect at least 1 Senator. It will be unnecessary to state all of the disparities in population ratios in all of the districts and subdistricts; some of them follow. Kent and Calvert Counties, each with a population of about 15,000 souls (population will sometimes be referred to herein in even thousands), are given 1 Senator apiece, while 17 other counties, with larger populations, some with populations as high as 84,000 (Allegany) and 91,000 (Washington), are

also only allocated 1 senator each.[3] A simple arithmetical calculation shows the disparity in individual voting effectiveness to range to a ratio of just about 6 to 1. Baltimore City, with a population of 939,000 is allotted 12 senators; Baltimore County, with a population of 492,000, 7 senators; and Prince George's County, with a population of 357,000, 6 senators. Taking 15,000, the population of Calvert and Kent Counties, as a basis for calculation, it is seen that the votes of the people of Baltimore City, when compared with the votes of the people of those counties, are debased or diluted more than 5 to 1; the votes of the people of Baltimore County by over 4½ to 1; and the votes of the inhabitants of Prince George's County nearly 4 to 1.

Additionally, it should be noted that under the scheme of the Bill some 37% of the State's population would elect a majority of 27 senators.[3a] Also, it is significant that very few of the 29 Districts would involve a variance of less than 15% (a figure that some courts consider to be about the top variance allowable, except under very unusual circumstances, or necessary, in a few instances, to round off an otherwise rational state apportionment scheme), although some of the variances would range to about 74%.

A reading of the above facts discloses that Senate Bill 8 transgresses and runs counter to nearly, if not, all of the mandates contained in the excerpts we have quoted from *Sims*. It is not based, primarily, on a population scheme; on the contrary, it is patently based upon geographical consideration, with county lines forming the boundaries, for the main part, of the Senatorial Districts, and the Districts, as proposed, would without peradventure of

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[3] The populations of the counties and Baltimore City are stated in the appendices 1, 2 and 3 filed herewith. See also Appendix A and Appendix B on pp. 429 and 430 of 229 Md. These appendices show in detail the various disparities.

[3a] Appendix 3 shows that Somerset, Kent, Caroline, Queen Anne's, Talbot, Dorchester, Wicomico, Worcester, Cecil, Calvert, St. Mary's, Charles, Howard, Carroll and Garrett would each elect 1 Senator for a total of 15; Montgomery and Prince George's 12 for a total of 27 Senators.

The combined population of these counties is 1,138,563; which is 36.7% of the total population of 3,100,689.

doubt, discriminate against large segments of the citizens of the State in their "constitutionally protected right to vote" without those votes being diluted. It, possibly, would permit considerably less than a majority of the population to elect a majority of the Senators. It definitely and obviously makes the weight of the citizens' notes "depend on where [they] live," and this "weight" is shown to vary nearly to the ratio of 6 to 1.

However, counsel for the appellants, with commendable zeal[4] and at great length, have urged upon us that the disparities mentioned above are constitutionally permissible because of the large amount of local legislation considered by the members of the General Assembly, and the important role in Maryland played by its counties. We concede the postulates of this argument, and, in answering the same, would discuss and consider them at greater length, were it not for the fact that the Supreme Court has already answered the same, and its rulings upon the Federal Constitution are binding, not only upon us, but upon all of the Courts in this Nation. In *Sims*, at p. 578 of 377 U.S., the Chief Justice, for the Court, stated:

> "Since, almost invariably, there is a significantly larger number of seats in state legislative bodies to be distributed within a State than congressional seats, it may be feasible to use political subdivision lines to a greater extent in establishing state legislative districts than in congressional districting while still affording adequate representation to all parts of the State. To do so would be constitutionally valid, *so long as the resulting apportionment was one based sub-*

[4] Counsel for appellants advanced, with ability and skill, every seemingly possible argument favorable to their clients, and counsel for the other parties did likewise. The Attorney General points to his rather unusual role in not defending the constitutionality of a legislative enactment. We know of no reason why the Attorney General or any other lawyer, should stultify himself by arguing to the Court contrary to his honest beliefs. He would have been in a most anomolous situation, after advising the Legislature that Senate Bill 8 was unconstitutional, if he argued here that it was. In our judgment, the Attorney General and his staff who assisted him conducted themselves with proper decorum as officers of this Court.

*stantially on population and the equal-population principle was not diluted in any significant way."*

From our statement above of the provisions of the Bill, wherein the county lines are predominantly utilized for political subdivision purposes and the weight of citizens' votes are debased to a rate of 1 to 6, can it be seriously contended the Bill "Still afford[s] adequate representation to all parts of the State," or that the apportionment is one based *substantially* on population, and "the equal-population principle [has not been] diluted in any significant way"? We think not. The figures themselves show, to the point of mathematical demonstration, that the equal-population principle is attempted to be diluted to such an extent that the Bill has little resemblance to constitutional permissibility. In our judgment, the Bill attempts to "dilute" the equal-population rule to a point where we know of no ready "condiment" that would quickly restore its constitutional "flavor."

The Court, again, at page 580, recognizes that "some deviations from population-based representation" may be allowable in order to insure "some voice" to political subdivisions as political subdivisions, "as long as the basic standard of equality of population *among districts is maintained.*" (Emphasis ours.) Finishing the paragraph the Court concluded:

> "But if, even as a result of a clearly rational state policy of according some legislative representation to political subdivisions, *population is submerged as the controlling consideration* in the apportionment of seats in the particular legislative body, then the right of all of the State's citizen's to cast an effective and adequately weighted vote would be unconstitutionally impaired." (Emphasis again ours.)

The Court had already stated, as quoted above, "* * * if a State should provide that the votes of citizens in one part of the State should be given two times, or five times, or 10 times the weight of votes of citizens in another part * * *, it could hardly be contended that the right to vote of those residing in the disfavored areas *had not been effectively diluted.*" (Emphasis added.) This portion of

the opinion makes clear what that Court meant when it used the phrase "population is submerged as the controlling consideration." With the disparity in the instant case ranging to some 6 to 1, we have no hesitancy in holding that population is submerged as the controlling consideration in Senate Bill 8, and its overall provisions render it constitutionally impermissible.

The Supreme Court, in *Sims*, clearly stated that, in considering the constitutional composition of a bicameral legislature, the make-up of both branches should be considered together, for it is possible that the composition of one body of such a legislature might prevent some deviation in the other body from being constitutionally impermissible, which would be impermissible if the composition of that body were considered alone. We have considered Senate Bill 8 in this light. It and Senate Bill 5 have identical provisions relative to the apportionment of the House of Delegates. We find nothing in the apportionment of the House, as we will explain it below, which would remedy the constitutional pitfalls of Senate Bill 8.

If we entertained any doubts whatever that our above holding is not directed and impelled by the decisions in *Sims, supra,* and the appeal of this case to the Supreme Court, they would be quickly dispelled by a reading of any one of three cases decided by that Court on the same day as *Sims* and the appeal herein: *WMCA, Inc., v. Lomenzo,* 377 U.S. 633, where New York's apportionment of both Houses was declared invalid; *Davis v. Mann,* 377 U.S. 678, which struck down Virginia's apportionment variances in the House ranging to 4.36 to 1, in the Senate to 2.65 to 1; and *Lucas v. Colorado General Assembly,* 377 U.S. 713, which dealt likewise with Colorado's apportionment where the disparities in the Senate ranged to 3.6 to 1, and in the House 1.7 to 1.

Appellants' final contention is that the Bill should be sustained as a valid stop-gap measure. The short but complete answer to this is the Supreme Court's command in its remand of the case to this Court: "However, under no circumstances should the 1966 election of members of the Maryland Legislature be permitted to be conducted pur-

suant to the existing or any other unconstitutional plan." 377 U.S. at p. 676.

II.

We turn to Senate Bill 5. None of the parties hereto contests its validity; however, in view of the mandate of the Supreme Court, mentioned above, we deem it appropriate to pass upon its validity.

This Bill presents a different picture from Bill 8. An analysis of Bill 5 discloses an underlying scheme of apportionment of each branch of the Maryland Legislature based primarily on the population of the State's residents. We consider first the provisions relative to membership of the Senate.

The State is divided into 16 Senatorial Districts from which 43 Senators will be elected; 3 from District 1, comprising Garrett, Allegany and Washington Counties; 2 from District 2, Frederick and Carroll Counties; 5 from District 3, Montgomery and Howard Counties; 5 from District 4, Prince George's County; 1 from District 5, Charles and St. Mary's Counties; 3 from District 6, Anne Arundel and Calvert Counties; 2 each from Districts 7-12 (the Legislative Districts of Baltimore City); 7 from District 13, Baltimore County; 1 from District 14, Harford County; 2 from District 15, Cecil, Kent, Queen Anne's, Caroline and Talbot Counties; and 2 from District 16, Dorchester, Wicomico, Worcester, and Somerset Counties. The bill provides for subdistricting any district entitled to elect more than 2 Senators.

Looking at the Bill in the light the Supreme Court has said that we must, i.e., placing the "judicial focus" on "the overall representation accorded to the State's voter," we find from Appendix 2 the following. The State's population (1960 census) is 3,100,689, which divided by 43 gives a mathematical unit of senatorial population of 72,109. The least percentage of the State's population which can elect a majority of 22 Senators will be 47.8. The Supreme Court, in one of the excerpts from *Sims* above, stated that it was not too much to expect from a proper apportionment that a majority of the voters be required in order to elect

a majority of the members of a legislature. However, the Court recognized that its suggested guidelines set forth therein were not inflexible, and, under warranted circumstances, they might yield slightly in order to accommodate and accomplish a rational state policy of apportionment. The rather small discrepancy here is not sufficient, we think, to destroy the validity of the reasonable and well thought-out apportionment of the members of the Senate.

Further, in no District is one voter's vote raised or diluted to a ratio of as much as 2 to 1. On the contrary, in only 4 of the 16 Districts does the population-per-senator figure vary more than 15% from the mathematical population norm,[5] and these exceed the 15% by small margins only (two of these are Legislative Districts in Baltimore City, whose overall variance is but 8.5%). And in 7 of the Districts the variance is less than 7%.

Although these comparatively small disparities exist, they are to be expected in nearly any rational overall State policy in reapportioning its Assembly, and they indicate no ulterior motives, for the Districts follow the boundaries of the present political subdivisions. The following of the existing boundaries, in and of itself, has certain distinct advantages, among them being the handling of voting machinery, its facility in conducting elections, and the less likelihood of any attempt at gerrymandering.

We hold that this Bill is an honest State effort to apportion the Senate on a population basis, and the small inequalities in voting strength mentioned above result from a good-faith attempt to effectuate a rational State policy, and that they are within the limitations set by the Supreme Court as being Constitutionally permissible.

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[5] The Supreme Court has not set an exact mathematical ratio, which will be constitutionally permissible or impermissible, and neither has any other Court to our knowledge. However, as we stated above, some Courts have adopted as a rule of thumb that a variance of over 15% from the population norm would be constitutionally suspect, while any lesser discrepancy would under ordinary circumstances, probably be constitutionally permissible. *Toombs v. Fortson*, 241 F. Supp. 65 (1965) (D.C., N.D. Ga.); *Silver v. Brown*, 405 P. 2d 132 (Sup. Ct. Cal. In Bank).

We turn now to the apportionment of the House of Delegates. Senate Bill 5 provides for a membership of 142 Delegates. Each county of the State and Baltimore City is allocated a minimum of 1 Delegate, accounting for 24 members. The remaining 118 seats are apportioned among the counties and Baltimore City according to the mathematical formula of equal proportions. The formula is applied by dividing the population of each county and the City, separately, by the geometrical mean between the numerals 1 and 2, 2 and 3, 3 and 4, and continuing in the progression so long as necessary to complete the computation. The resulting quotients for the House of Delegates are then arranged in order of numerical size, from the largest to the smallest, and the first 118 listings are given as additional memberships to the particular county or to Baltimore City. The Delegates thus allotted to the City are apportioned in the same manner and allocated to the several Legislative Districts thereof. The result of this "more or less fancy" mathematical calculation in apportioning the Delegates is shown, according to the parties, on Appendix 3.

The Bill also makes provision for dividing the counties and the City into districts, based on population, in the event any county is awarded more than 8 Delegates, or the City more than 48. It also provides for continuing its provisions in the elections after the year 1970, on the bases of federal decennial censuses. It is unnecessary to discuss the details of these provisions here.

An examination of Appendix 3 reveals that the mathematical unit of delegate population is 21,836. Each county obtains at least 1 member. Of the 142 seats, 132 will be elected by populations with variances less than 15% of the mathematical norm. The highest variance in the 10 seats which exceed 15% is one seat which ranges to 36%, but none of them reaches a disparity as great as 2 to 1. According to the decisions, 36% is, of course, high. However, as we stated above, the Supreme Court has recognized that some divergences from population-based representation are permissible, so long as they are the result of legitimate considerations incident to the effectuation

of a rational state policy, based principally upon population. *Reynolds v. Sims, supra; Roman v. Sincock*, 377 U.S. 695. Compare *Lucas v. Colorado General Assembly, supra* 377 U.S. 713. The parties to this appeal and the counsel who represent them have, for the main part, been vitally interested, for the last several years, in matters pertaining to apportionment, and have made careful studies of the decisions and writings thereon. They all agree that Bill 5 is constitutionally permissible. In light of the above and our own careful consideration of the matter, we are unwilling to strike down the Bill for the comparatively few "suspect" variances, which, in our view, clearly result from an earnest effort to accomplish a reasonable statewide apportionment, and, at the same time, accord some slight independent representation to individual, existing political subdivisions.

It will be noted that the 19 least populous counties and the First, Third, Fourth, Fifth and Sixth Legislative Districts of Baltimore City, with 49.5% of the State's population will elect 71 Delegates, constituting 50% of the membership and the remaining political subdivisions, with 50.5% will also elect 71 members. A further analysis of Appendix 3 discloses that 5 subdivisions, having 75.3% of the population, will select 106 Delegates, or 74.7% of the membership, while the remaining subdivisions, with 24.7% of the population will elect 36 members, constituting 25.3% of the total membership. To us, this demonstrates an honest and sincere apportionment, founded, primarily and principally, upon population.

We hold that Senate Bill 5 is constitutionally sustainable, and that it does not violate either the State or Federal Constitutions.

The above are the reasons that the majority passed the *per curiam* order herein.

THE MAJORITY PREVIOUSLY DIRECTED A PER CURIAM ORDER SUSTAINING THE ORDER OF THE TRIAL COURT. WE ADD TO THAT ORDER THAT THE TRIAL COURT RETAIN JURISDICTION AT LEAST UNTIL AFTER THE 1966 GENERAL ELECTIONS; AND THAT APPELLANTS PAY THE COSTS.

# APPENDIX 1

## Reapportionment of Senate

## 53 Members (Senate Bill 8)

| Senatorial District | County | 1960 Census | No. of Senators | Population Per Senator | % Variance Unit of Population |
|---|---|---|---|---|---|
| 1 | Garrett | 20,420 | 1 | 20,420 | −65 |
| 2 | Allegany | 84,169 | 1 | 84,169 | +44 |
| 3 | Washington | 91,219 | 1 | 91,219 | +56 |
| 4 | Frederick | 71,930 | 1 | 71,930 | +23 |
| 5 | Carroll | 52,785 | 1 | 52,785 | −10 |
| 6 | Howard | 36,152 | 1 | 36,152 | −38 |
| 7 | Montgomery | 340,928 | 6 | 56,821 | − 3 |
| 8 | Prince George's | 357,395 | 6 | 59,566 | + 2 |
| 9 | Charles | 32,572 | 1 | 32,572 | −44 |
| 10 | St. Mary's | 38,915 | 1 | 38,915 | −34 |
| 11 | Calvert | 15,826 | 1 | 15,826 | −73 |
| 12 | Anne Arundel | 206,634 | 3 | 68,878 | +18 |
| | Baltimore City: | | | | |
| 13 | District No. 1 | 126,611 | 2 | 63,306 | + 8 |
| 14 | District No. 2 | 166,057 | 2 | 83,029 | +42 |
| 15 | District No. 3 | 170,414 | 2 | 85,207 | +46 |
| 16 | District No. 4 | 159,385 | 2 | 79,693 | +36 |
| 17 | District No. 5 | 162,437 | 2 | 81,219 | +39 |
| 18 | District No. 6 | 154,120 | 2 | 77,060 | +32 |
| 19 | Baltimore | 492,428 | 7 | 70,347 | +20 |
| 20 | Harford | 76,722 | 1 | 76,722 | +31 |
| 21 | Cecil | 48,408 | 1 | 48,408 | −17 |
| 22 | Kent | 15,481 | 1 | 15,481 | −74 |
| 23 | Caroline | 19,462 | 1 | 19,462 | −67 |
| 24 | Queen Anne's | 16,569 | 1 | 16,569 | −72 |
| 25 | Talbot | 21,578 | 1 | 21,578 | −63 |
| 26 | Dorchester | 29,666 | 1 | 29,666 | −49 |
| 27 | Wicomico | 49,050 | 1 | 49,050 | −16 |
| 28 | Worcester | 23,733 | 1 | 23,733 | −59 |
| 29 | Somerset | 19,623 | 1 | 19,623 | −67 |
| | | 3,100,689 | 53 | | |

1 Unit of Population is 58,504 (+15% = 67,280 −15% = 49,728)

# APPENDIX 2

## Senate Bill 5 — Third Reading Copy

## Senator James Plan for Reapportionment of Senate With 43 Members

| *County* | *1960 Census* | *No. of Senators* | *Population Per Senator* | *% Variance Unit of Population* |
|---|---|---|---|---|
| Garrett, Allegany, Washington | 195,808 | 3 | 65,269 | — 9.5 |
| Frederick, Carroll | 124,715 | 2 | 62,358 | —13.5 |
| Montgomery, Howard | 377,080 | 5 | 75,416 | + 4.6 |
| Prince George's | 357,395 | 5 | 71,479 | — 0.9 |
| Charles, St. Mary's | 71,487 | 1 | 71,487 | — 0.9 |
| Anne Arundel, Calvert | 222,460 | 3 | 74,153 | + 2.8 |
| Baltimore City: | (939,024) | (12) | (78,252) | (+ 8.5) |
| District No. 1 | 126,611 | 2 | 63,306 | —12.2 |
| District No. 2 | 166,057 | 2 | 83,029 | + 15.1 |
| District No. 3 | 170,414 | 2 | 85,207 | + 18.2 |
| District No. 4 | 159,385 | 2 | 79,693 | + 10.5 |
| District No. 5 | 162,437 | 2 | 81,219 | + 12.6 |
| District No. 6 | 154,120 | 2 | 77,060 | + 6.9 |
| Baltimore County | 492,428 | 7 | 70,347 | — 2.4 |
| Harford | 76,722 | 1 | 76,722 | + 6.4 |
| Cecil, Kent, Queen Anne's, Caroline & Talbot | 121,498 | 2 | 60,749 | —15.8 |
| Dorchester, Wicomico, Worcester & Somerset | 122,072 | 2 | 61,036 | —15.4 |
| | 3,100,689 | 43 | | |

1 Unit of Population is 72,109 (+15% = 82,925 −15% = 61,293)

# APPENDIX 3

## Reapportionment of House of Delegates 142 Members by Mathematical Formula of Equal Proportions

## (Senate Bills 5 and 8)

| *County* | *1960 Census* | *No. of Delegates* | *Population Per Delegate* | *% Variance Unit of Population* |
|---|---|---|---|---|
| Allegany | 84,169 | 4 | 21,042 | — 4 |
| Anne Arundel | 206,634 | 9 | 22,959 | + 5 |
| Baltimore | 492,428 | 22 | 22,383 | + 3 |
| Baltimore City: | | | | |
| District No. 1 | 126,611 | 6 | 21,102 | — 3 |
| District No. 2 | 169,308 | 8 | 21,164 | — 3 |
| District No. 3 | 167,163 | 8 | 20,895 | — 4 |
| District No. 4 | 159,385 | 7 | 22,769 | + 4 |
| District No. 5 | 162,437 | 7 | 23,205 | + 6 |
| District No. 6 | 154,128 | 7 | 22,017 | + 1 |
| Calvert | 15,826 | 1 | 15,826 | —28 |
| Caroline | 19,462 | 1 | 19,462 | —11 |
| Carroll | 52,785 | 2 | 26,393 | +21 |
| Cecil | 48,408 | 2 | 24,204 | +11 |
| Charles | 32,572 | 2 | 16,286 | —25 |
| Dorchester | 29,666 | 1 | 29,666 | +36 |
| Frederick | 71,930 | 3 | 23,977 | +10 |
| Garrett | 20,420 | 1 | 20,420 | — 7 |
| Harford | 76,722 | 4 | 19,181 | —12 |
| Howard | 36,152 | 2 | 18,076 | —17 |
| Kent | 15,481 | 1 | 15,481 | —28 |
| Montgomery | 340,928 | 16 | 21,308 | — 2 |
| Prince George's | 357,395 | 16 | 22,337 | + 2 |
| Queen Anne's | 16,569 | 1 | 16,569 | —24 |
| St. Mary's | 38,915 | 2 | 19,458 | —11 |
| Somerset | 19,623 | 1 | 19,623 | —10 |
| Talbot | 21,578 | 1 | 21,578 | + 1 |
| Washington | 91,219 | 4 | 22,805 | + 4 |
| Wicomico | 49,050 | 2 | 24,525 | +12 |
| Worcester | 25,733 | 1 | 23,733 | + 9 |
| | 3,100,689 | 142 | | |

1 Unit of Population is 21,836 (+15% = 25,111 −15% = 18,561)

Dissenting Opinion by Barnes, J. in which Horney, J. concurs.

BARNES, J., dissenting.

I dissent because it seems clear to me that Chapter 3 of the Laws of Maryland (Special Session, October 1965) (Senate Bill 8) is a constitutionally valid legislative apportionment plan. Senate Bill 8 like Chapter 2 of the Laws of Maryland (Special Session, October 1965) (Senate Bill 5) provides for a House of Delegates of 142 members, but provides for a Senate of 53 members rather than a Senate of 43 members as provided for in Senate Bill 5. I agree with the majority that the apportionment for the House of Delegates is valid and constitutional, but I cannot agree that under the apposite decisions of the Supreme Court of the United States, the provision in Senate Bill 8 for a Senate of 53 members denies equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States (Fourteenth Amendment).

I do not understand that there is any disagreement that if the provisions for the 53 member Senate in Senate Bill 8 are constitutional, these provisions would be given effect in view of Section 4 of Senate Bill 8 which provides that "in the event this Act shall be declared valid by the Court of Appeals of Maryland, then Chapter 2 (Senate Bill 5) * * * shall not become effective * * *." This legislative mandate establishes the preference of the General Assembly for the 53 member Senate if the provisions of Senate Bill 8 establishing it do not contravene the provisions of the Fourteenth Amendment.

This legislative mandate comes to us with peculiar force in this case as it must be conceded that the apportionment of members in one of the houses of the Maryland bicameral legislature is, subject to Constitutional limitations, a purely legislative function in regard to which the judicial branch of the state government is forbidden by the Maryland Constitution to interfere. Article 8 of the Maryland Constitution in regard to separation of powers provides:

> "That the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other."

Our predecessors indicated in 1829 in *Crane v. Meginnis*, 1 G. & J. 463, at 472 that:

> "The legislative department is nearest to the source of power, and manifestly the predominent branch of the government."

This of necessity must be the case in a representative form of government. We held in *First Continental Sav. & Loan Ass'n, Inc. v. Director, State Dept. of Assessments and Taxation*, 229 Md. 293, 302, 183 A. 2d 347, 351 (1962), that the powers of the General Assembly are plenary except as restrained by the State or federal constitutions.

Indeed, it was not until the decision of the Supreme Court of the United States (Supreme Court) in *Baker v. Carr*, 369, U.S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663, on March 26, 1962 that the judicial branch of government, State or Federal, could consider judicially whether or not a House of a State Legislature was constitutionally established. The Supreme Court itself had consistently held prior to *Baker v. Carr* that such an issue was not justiciable. The masterful dissenting opinion of Mr. Justice Frankfurter in *Baker v. Carr* reviewed the prior authorities (including *Kidd v. McCanless*, 352 U.S. 920, 77 S. Ct. 223, 1 L. Ed. 2d 157 (1956), decided only 5 years prior to *Baker v. Carr* in which the Supreme Court had itself by dismissing the appeal in *Kidd* held that the issues in regard to the composition of the Tennessee Legislature involved in *Baker v. Carr* were not justiciable) and pointed out the lack of wisdom and the dangers involved in departing from the well established doctrine in a most sensitive area of state-federal relations. I have not yet seen any satisfactory answers to the points made by Mr. Justice Frankfurter and Mr. Justice Harlan in their dissenting opinions in *Baker*, but I, of course, agree that we are bound by the

decisions of the majority of the Supreme Court on federal constitutional issues whether or not we think them sound or justified. It might be added that it was by no means clear, however, until our decision by a divided Court in *Maryland Committee for Fair Representation v. Tawes*, 228 Md. 412, 180 A. 2d 656 (1962) that our duty of obedience to the decisions of the majority of the Supreme Court extended to a holding that *this Court* had power *under the Maryland Constitution* to strike down a provision of that Constitution establishing the membership in the General Assembly. Judges Henderson and Horney in their dissent in the *Maryland Committee* case were of the opinion that this Court had no such power but that the exercise of that power resided only in the federal courts.

I review these rather recent adventures in constitutional law only to indicate that the entire field is a new one fraught with grave dangers in a delicate area of state-federal relations and in which the Supreme Court has established no certain guidelines, preferring — properly I think — to consider each case as it arises in the light of general constitutional concepts which the Supreme Court has enunciated.

I agree with the majority that the most important decision of the Supreme Court of the 6 reapportionment cases, decided June 15, 1964[1] bearing on the questions before us is *Reynolds v. Sims*, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964). Chief Justice Warren, for the Supreme Court, stated in *Reynolds v. Sims:*

> "For the present, we deem it expedient not to attempt to spell out any precise constitutional tests. What is marginally permissible in one State may be unsatisfactory in another, depending on the particular

[1] In addition to *Reynolds v. Sims*, they are *WMCA, Inc. v. Lomenzo*, 377 U.S. 633, 84 S. Ct. 1418, 12 L. Ed. 2d 568; *Maryland Committee v. Tawes*, 377 U.S. 656, 84 S. Ct. 1429, 12 L. Ed. 2d 595; *Davis v. Mann*, 377 U.S. 678, 84 S. Ct. 1441, 12 L. Ed. 2d 609; *Roman v. Sincock*, 377 U.S. 695, 84 S. Ct. 1449, 12 L. Ed. 2d 620; *Lucas v. Colorado General Assembly*, 377 U.S. 713, 84 S. Ct. 1459, 12 L. Ed. 632.

circumstances of the case. Developing a body of doctrine on a case-by-case basis appears to us to provide the most satisfactory means of arriving at detailed constitutional requirements in the area of state legislative apportionment." (377 U.S. 578)

The Supreme Court recognizes the obvious fact that in the 50 States there are substantial and important differences in political traditions, economic conditions, and historical background which would make a simplistic, arithmetical requirement for legislative apportionment unworkable, abhorrent to the people affected and possibly destructive of orderly representative government. In short, the Supreme Court has no notion of establishing a constitutional Procrustean Bed on which the legislatures of the 50 States will be forced and then cut off or stretched to conform to its precise measurements. In my opinion, the majority has been led astray by its failure to appreciate and apply this declared policy of the Supreme Court; it does not see the constitutional "woods" for the arithmetical "trees".

What then are the applicable general principles enunciated by the Supreme Court in the Reapportionment Cases? As I read these cases they are:

I. "* * * a majority of the people of a State should elect a majority of that States' legislators." (377 U.S. 565)

II. More flexibility is constitutionally permissible with respect to state legislative apportionment than in congressional districting and this flexibility is constitutionally valid "so long as the resulting apportionment was one based *substantially* on population and the equal-population principle *was not diluted in any significant way.*" (Emphasis supplied.) (377 U.S. 578)

III. "A state may legitimately desire to *maintain the integrity of various political subdivisions,* insofar as possible, and provide for compact districts of contiguous territory in designing a legislative apportionment scheme. * * * *Indiscriminate districting, without any regard for*

*political subdivision or natural or historical boundary lines,* may be little more than an open invitation to partisan gerrymandering." (Emphasis supplied.) (377 U.S. 578-579)

IV. "History indicates * * * that many States have deviated, to a greater or lesser degree, from the equal-population principle in the apportionment of seats in at least one house of their legislatures. So long as the divergences from a strict population standard are based *on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal-population principle are constitutionally permissible with respect to the apportionment of seats in either or both of the two houses of a bicameral state legislature.*" (Emphasis supplied.) (377 U.S. 579)

V. "A consideration that appears to be or more substance in justifying some deviations from population — based representation in state legislatures is that of *insuring some voice to political subdivisions, as political subdivisions.* Several factors make more than insubstantial claims that a State can rationally consider according political subdivisions some independent representation in at least one body of the state legislature, as long as the basic standard of equality among districts is maintained. *Local governmental entities are frequently charged with various responsibilities incident to the operation of state government.* In many States *much of the legislature's activity involves the enactment of so-called local legislation, directed only to the concerns of particular political subdivisions.*" (Emphasis supplied.) (377 U.S. 580-581)

VI. "But if, even as a result of a clearly rational state policy of according some legislative representation to political subdivisions, population *is submerged* as the controlling consideration in the apportionment of seats in the particular legislative body, then the right of all the State's citizens to cast *an effective and adequately weighted vote* would be unconstitutionally impaired." (Emphasis supplied). (377 U.S. 581).

In my opinion the above quotations are far more apposite to the situation involved in the case at bar than are

many of the quotations, also from *Reynolds v. Sims*, relied on in the majority opinion.

These general principles, particularly relevant to the case at bar, have for the most part, been given in the exact language used by Chief Justice Warren in enunciating them in *Reynolds v. Sims*. As he spoke for the majority of the Supreme Court, we are entitled, and indeed required, to take his words at their face value and to believe that the majority of the Supreme Court intends to adhere to them. In my opinion, the General Assembly and the people of this State are also entitled to have us apply these general principles to Senate Bill 8 and to sustain its constitutionality if the application of those principles permits it.

In my opinion, the provisions of Senate Bill 8 in regard to both the apportionment of seats in the House of Delegates and in the Senate fully comply with the general principles above set forth and Senate Bill 8 should be held to be constitutional as it does not deny citizens of any portion of this State the equal protection of the laws. As the majority agrees that the apportionment of the House of Delegates in Senate Bill 8 (which is the same as that in Senate Bill 5) is clearly constitutional, the discussion will be confined, for the most part, to the apportionment of the Senate.

## I and II

In the apportionment of the Senate by Senate Bill 8, a majority of the Senate seats are allocated on the basis of population. The resulting apportionment is based *substantially on population* and the equal-population principle is *not diluted in any significant way*.

The Senate of Maryland as established by the people in the Constitution of 1867 did not purport to be based on any equal-population concept. It, as subsequently amended, provided for one senator from each county and one senator from each of the six legislative districts of Baltimore City regardless of population making a total of 29 senators. There were great disparities in the population of the various counties and Baltimore City legislative dis-

tricts and 19 counties with less than 25% of the population of the State elected 19, or approximately two-thirds of the senators.[2] There is no question that the apportionment of the senate under Senate Bill 8 is based generally upon the equal-population principle. The plan of apportionment adopted in Senate Bill 8 for the Senate, although the senators are allocated by number in senatorial districts, substantially follows the same population principle as that followed for the allocation of seats in the House of Delegates. The Senate Bill 8 senate plan allots one senator to each political subdivision for a total of 24 and allots 27 of the remaining 29 seats of the 53 member body on a population basis based on the equal-population principle. This is also the same type of rule used in apportioning the United States House of Representatives. Under a strict application of the equal population rule as to the remaining 29 seats, Baltimore City would receive 14 rather than 12 senators. Baltimore City, however, has for many years been divided into 6 legislative districts so that it was more practicable to allot 12 seats to Baltimore City thus giving each legislative district 2 senators each. In Senate Bill 5, Baltimore City is also given 12 senators. The 2 seats not given to Baltimore City were apportioned one each to Prince George's and Montgomery Counties, two of the most populous and rapidly growing subdivisions, which have senatorial ratios under Senate Bill 8 which are almost mathematically perfect. It is clear that over one-half of the 53 Senate seats are apportioned according to population and that the 5 most populous subdivisions (Baltimore City, Baltimore, Montgomery, Prince George's

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[2] Even this apportionment of the Senate when taken together with the reapportionment of the House of Delegates, was not thought by Mr. Justice Stewart, in his dissenting opinion, to be unconstitutional on its face or that the entire plan reflected "no policy, but simply arbitrary and capricious action or inaction." He indicated in *Maryland Committee v. Tawes*, 377 U.S. 656 at 677, 84 S. Ct. 1440, 12 L. Ed. 2d 608, that the case challenging the constitutionality of the Maryland Senate should be remanded to determine whether the Maryland apportionment, including the 29 member Senate, "could be shown systematically to prevent effective majority rule."

and Anne Arundel Counties) elect 34 of the 53 senators, or 64.15% of the Senate while the remaining counties elect only 19 of the 53 Senators, or 35.85% of the Senate.[3] This not only gives the most populous subdivisions majority control of the Senate but gives them more than the 60% majority needed to propose amendments to the Maryland Constitution (Art. XIV, Sec. 1), for enacting emergency legislation (Art. XVI, Sec. 2) and for overriding a veto by the Governor (Art. II, Sec. 17). It is quite apparent that under Senate Bill 8 the 5 most populous political subdivisions elect a large and dominating majority of the members of the Senate; and that the equal-population principle is indeed not "diluted in any substantial way." Effective majority rule is, in my opinion, clearly established.

## III, IV and V.

As we have seen, the State may "legitimately desire to maintain the integrity of various political subdivisions."

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[3] In the majority opinion it is stated: "Additionally, it should be noted that under the scheme of the Bill (Senate Bill 8) some 37% of the State's population would elect, a majority of 27 senators." As explained in footnote 3a, of the majority opinion, this result is reached by combining the populations of 15 counties having the smallest populations and having 15 senators with two of the most populous counties, Montgomery and Prince George's, having 12 senators. Although the figures appear to be correct, the result has no political reality as this type of "combination" is most unlikely. Of far more significance in this case is the following: Using the 1960 census figures for population in Maryland the five most populous political subdivisions in Maryland containing 75.35% of the State's population elect 74.65% of the members of the House of Delegates and 64.15% of the members of the Senate. The remaining 19 less populous political subdivisions elect 24.65% of the members of the House of Delegates and 35.85% of the members of the Senate. The calculation is as follows:

| | 1960 Census | | House | | Senate | |
|---|---|---|---|---|---|---|
| | *Population* | *%* | *Seats* | *%* | *Seats* | *%* |
| Baltimore City, Baltimore County, Prince George's County, Montgomery County and Anne Arundel County | 2,336,409 | 75.35 | 106 | 74.65 | 34 | 64.15 |
| Remaining 19 Counties | 764,280 | 24.65 | 36 | 25.35 | 19 | 35.85 |

The practicability of accomplishing this rational State purpose may vary from State to State but in Maryland, because of the unusual importance of the counties in the Maryland government and their relatively small number, it is practicable to preserve their identity and give them a voice in the Senate without violating the general equal-population principle.

The importance of the county in Maryland as a governmental unit derives, in part, from the early date of the creation of many of them. Eleven of the twenty-three counties were in existence in 1695.[4] The Maryland Constitution of 1867 by the provisions of Article XIII, Section 1, effectively, as a practical matter, prevents the creation of any counties in addition to those already established.[5] The unusual nature of the Maryland counties is set forth at page 419 of The Maryland Geological Survey, "The Counties of Maryland, Their Origin, Boundaries and Election Districts" (1907) as follows:

> "The counties in Maryland occupy a far more important position than do similar political divisions in many other states of the union. This prominence of the county is due primarily to the fact that in Maryland it serves as the unit of division of the territory of the State and is not formed by the combination of smaller integral unites, as is the case in the North and West, where townships with their own local political organization are the units of political division. Where townships exist they are united to form a county and the county organization is accordingly

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[4] The dates of the creation of the counties in Maryland are as follows: St. Mary's 1637, Kent 1642, Anne Arundel 1650, Calvert 1650, Charles 1658, Baltimore 1659, Talbot 1662, Somerset 1666, Dorchester 1668, Cecil 1679, Prince George's 1695, Queen Anne's 1706, Worcester 1742, Frederick 1748, Caroline 1773, Harford 1773, Washington 1776, Montgomery 1776, Allegany 1789, Carroll 1836, Howard 1851, Wicomico 1867, Garrett 1872.

[5] See Maryland Geological Survey, "The Counties of Maryland, Their Origin, Boundaries and Election Districts", (1907) at page 426. For a view of the distinctive history of each of the Maryland counties see pages 429 to 572.

more general and less complete than is the case in this state. Maryland possesses incorporated towns and villages analogous to those of other parts of the United States but the nearest analogue to a township — the election district, is not a political unit with its own individual government, but is rather a precinct serving for election and other purposes within the county. In Virginia, the counties are often composed of several Hundreds or Parishes which become the local units in popular consideration if not in political government."

Maryland has been fortunately spared the proliferation of incorporated towns and villages present in many states. Generally speaking the important municipal services outside of Baltimore City, are performed by the County governments. The need for local legislation is likely to continue to a substantial extent even though the Charter-type of County Government should be extended in the future.

In Maryland, health services are primarily organized at the county level.[6] Then too, jails, libraries,[7] the assessments of real property[8] and soil conservation programs[9] are organized on a county basis. Seventeen of the twenty-three counties construct, reconstruct and maintain their own road systems.[10]

An examination of the Maryland Manual, 1961-1962 pages 347, et seq., listing the local officials in even a small county such as Calvert County, indicates the wide range

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[6] In the Maryland Manual 1961-1962 at page 69 it is stated: "Local Health Services make public health service available to residents of Maryland through the twenty-four local health departments. These local health officers with their staffs of nurses, sanitarians, and others, are the backbone of public health services in Maryland. These local units operate the public health programs in each county and Baltimore City * * *."

[7] Md. Code, Art. 77, §§ 177-201.

[8] Md. Code, Art. 81, § 232, et seq.

[9] Md. Code, Art. 66C, § 91, see also Maryland Manual 1961-1962, p. 116.

[10] Maryland Manual, 1961-1962, p. 99.

of governmental services and responsibilities given to the county government. In many of the larger counties there are additional agencies and officials, including Planning Commissions, Zoning Boards, Plumbing Boards, Industrial Development Commissions, Building Inspectors, Inspectors of Weights and Measures, Parks Boards, Recreation Commissions and other boards and Commissions.

Most importantly, in Maryland one of the most vital and expensive of all governmental functions, namely, that of public education, is administered largely at the county, rather than at the State, level. In Maryland, the State, except in certain limited areas, retains only a visitorial power over the county school systems. In Andrews, "History of Maryland," pages 638-639, the learned author states:

> "* * * [I]n the original Maryland scheme there were twenty-three county boards, together with the independent unit of Baltimore City. These twenty-four boards in Maryland acquire especial significance when it is realized that New York, for example, has upward of ten thousand boards."

The unusual nature of the Maryland educational system of using counties as school districts is indicated by the fact that Maryland is one of only 5 States in the Union which has no school districts other than county units.[11]

When the expenditures of the local county government and those of the State government are considered, the importance of the county political subdivision is quite apparent. In the recent Interim Report of the Commission on State and County Finance (the Cooper Commission), it is indicated that in 1962 the direct expenditures of the local governments in Maryland amounted to $714,400,000.00, or 69.4% of the total expenditures of State and

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[11] The other States are Hawaii, Rhode Island, Virginia and North Carolina. See Anderson et al., "Government in the Fifty States." (Rev. ed. 1960) pages 24-25.

local governments. At page 13 of the Interim Report it is stated:

> "Of the total task of government, as measured by expenditures, the State bears about 30 percent and local governments bear 70 percent. The revenue sources are shared about 50-50. If highway expenditures and revenues are excluded * * * the division of responsibility becomes 25 percent State and 75 percent local, with the revenue split still remaining close to 50-50."

It seems clear, therefore, that in Maryland, the political subdivisions, given some (but not controlling) independent representation in the Senate by Senate Bill 8 are the basic framework in the governmental structure of the State. These political subdivisions carry out vital responsibilities of government in many most important areas, so that one of the factors mentioned in *Reynolds v. Sims* for a departure from population-based-representation is clearly met. It is present in Maryland to a far larger extent than was present in any of the reapportionment cases decided by the Supreme Court involving reapportionment plans in States other than Maryland.

As would be expected in a State in which the local political subdivisions are given such important governmental responsibilities, much of the legislation considered by the General Assembly of Maryland is "local legislation." The Chief Justice has quite properly indicated that this factor is one which may be considered as part of a rational State reapportionment policy justifying representation to a political subdivision, as such, and some divergence from a strict population standard.

This factor of "local legislation" applies with particular force in Maryland. Apparently Maryland is one of the few States in the Union having a published Code of Public Local Laws. Dr. Carl Everstine, the very able Director of the Department of Legislative Reference in "Maryland Legislative Council, Local Government: A Comparative Study" Research Report No. 23 (September 1944) page 1, stated:

> "Maryland occupies almost a unique position among the states, for its legislature gives perhaps more attention to the details of local government than does the legislature of any other state in the Union."

Dr. Everstine also pointed out the vital importance of the "local delegation" in the consideration of local bills as follows:

> "The rules of procedure adopted and followed by the legislatures of other states show an interesting contrast with those of Maryland with respect to the committees to which local bills may be assigned.
>
> "Local bills introduced into the General Assembly of Maryland usually are referred to select committees made up, in the House, of the members of the county delegation concerned, and in the Senate, of the Senator from the county concerned and the senators from two adjoining counties. Occasionally, a bill which would affect only one county may yet have implications of state-wide importance which will lead to its being referred to a standing committee, but it is the general practice to refer all local bills to select committees, and the rest of the legislature accepts without question the recommendations of these committees. There are no standing committees to which all local bills may be referred simply by virtue of their being local bills.
>
> "The practice in other states seems to be widely different than in Maryland. Every one of the other forty-seven states has one or more standing committees to which, so far as one may judge from their names, the local bills of *all* counties may be referred." (Emphasis in text.)[12]

In Maryland political life, the Senator from the county in regard to which the local legislation is concerned,

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[12] "Maryland Legislative Council, Local Government: A Comparative Study", Research Report No. 23 (September 1944) page 17.

usually plays a dominant role in its consideration, and ultimate passage or rejection. The senator has particular political responsibility in this field and is usually held accountable by the electorate for the success or failure of the local legislative program for the political subdivision. The senator has been thought of by his constituents as a member of the "upper" House of the bicameral legislature, and as such, to have greater authority and prestige than that enjoyed by the members of the House of Delegates. One might think that the senator's dominant position in local legislation would be taken over by the delegate in those counties who will only have one delegate, but this idea overlooks the political fact that *legislation must also pass the Senate.* There may well be a serious conflict between the policy advocated by the one delegate and that thought wise by a senator who does not reside in, and who is not politically dependent upon, the electorate from the county having the one delegate. And if the one-delegate county was in a senatorial district as provided for in Senate Bill 5 where there were *two* senators, neither of whom is from the one-delegate county, there might well be a divergence of opinion between the two senators with resulting confusion, lack of political responsibility and real injury to the local political subdivision involved. To take a concrete illustration from the provisions of Senate Bill 5, Senatorial District 15 is composed as follows: Cecil, Kent, Queen Anne's, Caroline and Talbot, having a combined population by the 1960 census of 121,498. Two senators are provided for Senatorial District 15. Under Senate Bill 5 the representation in the House of Delegates and the population of the individual counties would be as follows:

| *Name of County* | *Number of Delegates* | *Population, 1960 Census* |
|---|---|---|
| Cecil | 2 | 48,408 |
| Kent | 1 | 15,481 |
| Queen Anne's | 1 | 16,569 |
| Caroline | 1 | 19,462 |
| Talbot | 1 | 21,578 |
| | | 121,498 |

It would seem reasonable to predict that Kent County with approximately 13% of the population of District 15 will most likely never have a senator from that county. Cecil County with approximately 40% of the total population of District 15 will most likely always have one senator. The other senator will most likely come from Talbot County having approximately 18% of the population of District 15. The *local* interests of Cecil County and Kent County may be quite different and if either one or both of the senators were not sympathetic with the local legislation presented by Kent County's one delegate, the local legislative program of Kent County would most likely never be enacted into law and there would be great difficulty in definitely fixing the political responsibility for that failure. On the other hand, if Kent County had one senator representing it in the Senate of Maryland as provided for in Senate Bill 8 this unfortunate situation — most injurious in my opinion to orderly and proper representative government — would be avoided. In short, so far as the Senate is concerned, it is difficult to have representative government without a representative.

The importance of local legislation in a consideration of reapportionment in Maryland appears in the Report to the Governor of Maryland of the Commission to Study Reapportionment of the General Assembly, filed January 31, 1964. There were two reports; the majority report recommended no changes in the existing Senate, and the minority report (or Hanson Report) recommended changes in the Senate, but recognized the vital importance of local legislation in Maryland and the desirability of having at least one senator from each political subdivision.

The Hanson Report was written by Professor Royce Hanson, Assistant Professor of Government at American University and who resided in Montgomery County. It was concurred in by other distinguished members of the Commission, *i.e.*, Samuel D. Hopkins, a resident of Baltimore City and a party to this suit; Dr. Roger Howell, a former Dean of the University of Maryland Law School, who resides in Baltimore City; Walter J. Bierwagen,

representing the AFL-CIO, who resides in Prince George's County and Helen L. Koss, second vice president of the Maryland League of Women Voters (an amicus curiae in the case at bar) who resides in Montgomery County.

In the Hanson Report the following was stated:

> *"Because of the significance of the counties and the City of Baltimore in the total scheme of government in Maryland, each county and the City should be assured of at least one representative in each house of the General Assembly. This assumes a voice for its corporate interest."* (Pg. 28)
>
> * * * * * *
>
> "We should like to see the size of the House reduced to its traditional figure (123 members), but do not believe this is possible, without giving up the minimum of one delegate, the advantages of which are important *in a state with so heavy a burden of local legislation* or without apportioning the senate strictly on population." (Pg. 29)
>
> * * * * * *
>
> THE SENATE should be reapportioned to make possible its responsibility to a majority of the people, but it should be so designed to account for other factors which are not heavily weighted in the House. We recommend that the Senate contain 47 members apportioned on the basis of population, except that every county and the City should be guaranteed one senator, whatever its population. * * * Because of the rapid population growth and the need for greater flexibility we recommend the 47 seat Senate, thereby providing 23 senators representative of population alone and 24 as guaranteed representatives of the jurisdiction. * * * We also emphasize that if the Senate's side should fall below 41 members, it would be necessary to combine small counties to form senatorial districts in order to provide even marginal control of the Senate for the vast majority of the state's electorate. *We do not think this is desirable in a*

*state with much local legislation to enact.* It is not necessary if our recommendation is followed." (Pg. 30) (Emphasis supplied.)

Although some of the populous counties have adopted charters, the actual number of local bills has not significantly declined as the following table of bills referred to select committees will indicate:

| | *1963* | *1957* | *1953* |
|---|---|---|---|
| "House | 410 | 570 | 452 |
| Senate | 219 | 201 | 215 |
| Total | 529 | 771 | 667 |
| Total All Bills | 1865 | 1616 | 1500 |
| Percentage of Bills Referred to Select Committees of All Bills Introduced | 33.7% | 47.7% | 44.5%" |

It is interesting to note that at the last Regular Session of the General Assembly in 1965 as shown by the index to the 1965 Laws of Maryland there were 18 bills enacted into law relating only to Kent County while there were but 15 such bills relating only to Cecil County.

In the study made by Professor V. O. Key, former professor of government at Johns Hopkins University and at Harvard University and a former president of the American Political Science Association, in his 1940 Report to the Legislative Council of Maryland entitled, "The Problem of Local Legislation in Maryland," he stated at page 1, Note 3:

> "The total of 509 local bills passed in 1939 must have entailed in the neighborhood of the same number of conferences with county commissioners, city officials, and other persons requesting the introduction of bills. Of the 509 bills passed, 173 were amended during the course of passage. It may be inferred that behind these amendments were conferences and discussions with local officials and other constituents desiring alterations in the bill as introduced."

The Supreme Court has always sustained the Maryland system of local legislation. See *Chappel Chemical and Fertilizer Co. v. Sulphur Mines Co.*, 172 U.S. 474, 19 S. Ct. 268, 43 L. Ed. 520 (1899) and more recently, *Salsburg v. Maryland*, 346 U.S. 545, 74 S. Ct. 280, 98 L. Ed. 281 (1954) in which the Supreme Court sustained the application of differing rules of evidence to different counties — a somewhat extreme example of local legislation. See also *McGowan v. Maryland*, 366 U.S. 420, 427, 537, 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1961).

It is significant to me that Professor Robert G. Dixon, Jr., Professor of Law at George Washington Law School and Graduate School of Public Law, is of the opinion that the preservation of the integrity of local political subdivisions is a legitimate basis for divergence from a population standard. His article "Apportionment Standards and Judicial Power," 38 Notre Dame Lawyer 367 (1963), indicates his position and this article was cited with approval in the majority opinion in *Reynolds v. Sims*.

See page 579 and note 60 of 377 U.S. Professor Dixon, in the same article, also stated at page 391:

> "[R]epresentation of each county in the legislature may be a practical necessity in those states such as Florida and Maryland where there is a custom of handling local governmental matters by 'special' legislation (more properly called public-local legislation) rather than by public-general legislation or county home rule."

A matter of vital importance to a political subdivision in having at least one senator is in connection with the requirement in the Maryland Constitution that the Governor's appointments of various local officials be confirmed by the Senate. For example, the trial magistrates, the Liquor License Commissioners and other local officials of this type must have senatorial confirmation. The senator representing the local political subdivision involved has in almost all cases the "veto" power over a gubernatorial

appointment of such a local official. That senator represents the *local* opinion in regard to the qualifications and desirability of the appointee. That opinion is important for the proper administration of local government and the local political subdivision involved should have a representative in the Senate for the performance of this important function.

Then too, scholarships to various educational institutions are allocated to the members of the Senate for appointment. Although generally there are examinations given to determine the general availability of students in the political subdivision for the awards, the ultimate selection from those receiving the highest grades, rests with the senator. It is unrealistic to suppose that many scholarships will be allocated to students from unrepresented counties in the Senate created by Senate Bill 5. Although I think it is unfortunate that courts are now required to enter this generally unwanted portion of the political arena, I think that in exercising our new judicial function we should not be politically naive. We must face and carefully consider the political realities involved; we cannot depend upon simple arithmetic.

Another important consideration which supports — in Maryland particularly — the concept of giving each political subdivision one senator in the upper house of the bicameral legislature, is to insure that the electorate of each political subdivision has a *voice* in the deliberations of that house. Maryland is unusually diversified in topography, climate, natural resources and in its economy. For example, the *only* ocean frontage, ocean park areas and ocean recreational areas are located in Worcester County. The center of the oyster and crab industry is in Somerset County. The electorate and their representatives from these two counties would have an appreciation of the problems and legislative needs arising from these local situations which no other electorate or representative could have. It is quite unlikely that either of these counties will ever have a State Senator in Senatorial District 16 set up by Senate Bill 5 as Worcester County has only approximately 20%

and Somerset County only approximately 15% of the total population of District 16 (122,072 in the 1960 census) as contrasted with approximately 40% and 25% respectively of that total population in Wicomico County and Dorchester County. In short, the two senators from District 16 are most likely to come from Wicomico and Dorchester Counties which have approximately 65% of the population. But in my opinion it furthers a rational State policy to provide that these two smaller counties *should have a voice* of their own in the Senate of Maryland, not only to protect their own local interests but, perhaps more importantly, to give the entire Senate the facts and local point of view in regard to those important parts of the whole economy of the State. We should not lightly assume that the Supreme Court, which has shown such zeal in protecting the rights of minorities, will now rule that a minority of voters *will not even be permitted to be heard* in the upper house of the Maryland bicameral legislature. It is one thing to say that a minority shall not rule; it is quite another thing to say that it shall not be heard.

## VI.

The Supreme Court, however, has indicated that even though representation of political subdivisions may be the result of a clearly rational state policy, this policy cannot submerge population as the controlling consideration in the apportionment of seats in the particular legislative body. Is population submerged as the controlling consideration in the apportionment of seats in the Senate of Maryland by Senate Bill 8? It seems clear to me that it is not.

It has already been observed that except for the allocation of the one senator for each political subdivision, a total of 24 senators, the remaining 29 seats of the 53 member Senate are allocated on a basis of population based on the rule of equal proportions. Well over one-half of the 53 senate seats are thus apportioned on the basis of population. The 5 most populous political subdivisions not only control a majority of the Senate seats but more than the 60% of the voters required to amend the Maryland Con-

stitution, pass emergency legislation or override a veto. It seems obvious that not only is the principle of population in apportioning seats *not submerged*, but it is *dominant and completely effective in its control of the Senate provided for in Senate Bill 8.*

It should be pointed out that the provisions of Senate Bill 8 in regard to the apportionment of Senate seats give substantially greater recognition to the principle of population than was recommended in the Report of the Committee on Congressional Redistricting and Legislative Apportionment, dated November 17, 1964. This Committee of the Legislative Council of Maryland consisted of 18 highly qualified members of the General Assembly of Maryland (9 from the Senate and 9 from the House of Delegates). Senator William S. James, President of the Senate was Chairman and Delegate Marvin Mandel, Speaker of the House of Delegates was vice-chairman. This able Committee recommended a Senate of 47 members in which the 5 more populous political subdivisions (Baltimore City, Baltimore County, Prince George's County, Montgomery County and Anne Arundel County) were allocated 28 seats and the remaining 19 counties were given one senator each, a total of 19 senators. Under this recommended Senate the 5 most populous political subdivisions received 59.57% of the total number of seats. In the Senate provided for in Senate Bill 8, the same 5 more populous political subdivisions received 64.15% of the total number of seats. The Committee clearly recognized the principle that each political subdivision should have at least one senator in the Maryland Senate.

The Supreme Court has not established any mathematical formula for determining degrees of disparity between the population of districts. It would be impracticable to do this based on a particular census. In any event, such a basis would have little enduring effect in a State with as rapidly growing a population as in Maryland; the mathematical basis would have little reality in a few years or even in several months. It should be kept in mind also that population, although possibly reflecting *generally* the prob-

able number of qualified voters in one district as compared with another district, does not *automatically reflect the number of qualified voters* as the number of children who have not reached voting age in a fast growing community will be counted in the "population" of that district, but will not really reflect the electoral strength of that district *vis a vis* a slow growing and older district having proportionately more qualified voters. In short, a purely mathematical formula is neither desirable nor feasible for application in reapportionment problems. See Professor Davis, "Apportionment Standards and Judicial Power", 38 Notre Dame Lawyer, 367 at pages 381-386.

When the total number of representatives in both the Senate and the House of Delegates provided for in Senate Bill 8 are considered together — which is a legitimate approach to a reapportionment problem — see 377 U.S. 577 and see also Professor Davis, *supra*, at page 390 of 38 Notre Dame Lawyer, the dominance of the population principle is clearly seen.

It is apparent that the Senate Bill 8 reapportionment of both the House of Delegates and the Senate follows in general the recommendations of the Hanson Report, although in the Hanson Report a Senate of 47 members with one representative in each house guaranteed to each political subdivision was recommended, whereas there is a 53 member Senate provided for in Senate Bill 8. It is interesting to note, however, that the Senate provided for in Senate Bill 8 gives Baltimore City and the 4 suburban counties a greater proportion of legislative power than did the plan recommended by the Hanson Report.

On page 20 of the Hanson Report, Professor Hanson described the method used in determining the allocation of legislative power, as follows:

> "If we devise a means of measuring legislative power as a rough test of the total system of representation, the situation is even more clearly shown. Since the representative power is equally divided between the two houses, half the power is in each. Thus a unit's

total legislative power is represented by ½ its percentage of the total membership of one house added to ½ its percentage of its membership in the other.[8] (Footnote 8 — A full explanation of this method can be found in Alan L. Clem, 'Measuring Legislative Malapportionment: In Search of a Better Yardstick,' *The Midwest Journal of Political Science*, VII, 125-144 (1963).

"The Hanson report recommendations compare with the distribution of legislative power under Chapter 3 as follows:

| | Hanson Report | | | | Senate Bill 8 Plan | | |
|---|---|---|---|---|---|---|---|
| | % *Pop.* | % *Del.* | % *Sen.* | % of *Leg. power in both houses* | % *Del.* | % *Sen.* | % of *Leg. power in both houses* |
| Baltimore City | 30 | 27 | 21 | 25 | 30 | 23 | 26 |
| 4 Suburban Counties | 45 | 38 | 36 | 37 | 44 | 42 | 43 |
| 9 Medium Counties | 17 | 20 | 21 | 21 | 18 | 17 | 17 |
| 10 Small Counties | 8 | 14 | 21 | 18 | 8 | 19 | 13 |

(Discrepancies in totals due to rounding.)"

In connection with the thought that the legislative process is to be considered as a whole in deciding reapportionment cases, I am of the opinion that an additional factor is to be considered, i.e., that Maryland is a "strong Governor" State. Not only does the Governor in Maryland have the usual veto power (which is a part of the legislative process designed to creat a check upon ill considered legislation, see Article II, Section 17) but by Article III, Section 52 of the Maryland Constitution the Governor not only formulates the State Budget, but the General Assembly may not increase it unless it provides the necessary taxes to meet the increased expenditure. The history of this beneficent amendment to the Maryland Constitution in 1916 is set forth by Chief Judge Sobeloff,

for the Court, in *McKeldin v. Steedman*, 203 Md. 89, 97, 98 A. 2d 561, 564 (1953). Chief Judge Sobeloff stated:

> "The heart of the scheme, as stated by the Goodnow[13] Commission, is 'to impose upon the Governor the sole responsibility * * * of presenting to the legislature a complete and comprehensive statement of the needs and resources of the State * * *; to make it impossible for the legislature so to change the plans proposed by the Governor as to produce a deficit; but, to permit the legislature to make provision for any purpose not included in the Governor's plan on the condition that it provide for the revenue which the accomplishment of its purpose necessitates.'"

The Governor, by Article II, Section 17 of the Maryland Constitution is given the power to veto *items* in any bill making appropriations.

These constitutional provisions and the various statutes implementing the formulation of the State budget and fiscal policy by the Governor give him a dominant position in the fiscal policy of the State not usually enjoyed by the Chief Executive of a State, but more usually performed by the legislature itself. This most important participation by the Governor, who is elected by the electorate at large throughout the State, in the legislative process is, to my mind, an added reason why some — but not dominant — representation should be given the smaller political subdivisions so that they will not be completely overwhelmed by the dominant majority. Indeed the power of the Governor who must depend upon the majority of voters State-wide, is such that *in the final analysis* (although sometimes temporarily delayed) the will of the majority has in fact been effective in Maryland even before the present constitutional requirement to reapportion became a part of the constitutional law of the United States.

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[13] Dr. Frank J. Goodnow, then President of the Johns Hopkins University, was its chairman and among its distinguished members was F. Neal Parke, later a member of the Court of Appeals.

It is clear to me that under the provisions of Senate Bill 8 population is not submerged. In my opinion, Senate Bill 8, now Chapter 3 of the Laws of Maryland (Special Session, October 1965) should have been declared constitutional, valid and effective by the Chancellor and I would reverse his decree to the contrary.

I am authorized to state that Judge Horney concurs in the views here expressed.

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MANDATE

Court of Appeals of Maryland

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September Term, 1965

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No. 487

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*Harry R. Hughes, et al.,*

v.

*Maryland Committee for Fair Representation, et al.*

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*Appeal from the Circuit Court for Anne Arundel County.*

*Filed: January 3, 1966*

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January 11, 1966—Decree affirmed. Opinion to follow. Per Curiam Order filed.

March 2, 1966—The majority previously directed a Per Curiam Order sustaining the order of the trial court. We add to that order that the trial court retain jurisdiction at least until after the 1966 General Elections; and that appellants pay the costs. Opinion by Prescott, C.J. Horney and Barnes, JJ. dissent.

March 2, 1966—Dissenting opinion by Barnes, J. in which Horney, J. concurs.

# APPENDIX C

## Minority Report of Governor's Commission on Reapportionment, 1964.

### Minority Report

by

Royce Hanson, Walter J. Bierwagen, Samuel Hopkins, Roger Howell, and Helen L. Koss*

Our views stem from a basic disagreement with the Commission report.

### I. *Summary and Recommendations*

1. *The report is made in unnecessary haste.* The Commission last year requested a delay of its report until the Supreme Court could decide the cases before it and establish constitutional guidelines. The conditions which justified that delay still exist. We have no desire unnecessarily to postpone action. Neither do we wish to advise action which may result in an unconstitutional apportionment, forcing the General Assembly to reapportion itself only to have to do it again within a few months.

2. The Commission failed even to consider the relationship of its recommendations for the House of Delegates to the composition of the State Senate. The result is a small House with almost half its membership allocated without regard to population. With the Senate unchanged, a minimum allotment of two delegates per county and twelve for the City is unreasonable, unrealistic, impractical, and, we feel, unconstitutional.

3. The Commission has therefore failed in its purpose of studying the apportionment problem of the State and devising a permanent plan to constitutionally meet this problem. There has been no study to determine the need for districts, or to determine the wisdom of minimum allotments of delegates and senators to counties, to find the best

* Dr. Furman L. Templeton is in substantial agreement with this minority report.

means of representing all the vital interests of the people of the State, or even to determine the constitutional bounds within which an apportionment must be made. Its proposal is neither complete nor permanent.

4. We therefore recommend:

a. That the report of the Commission and the minority report be withheld pending the resolution of the Maryland case now before the Supreme Court of the United States, and that the Governor recommend to the legislature no action on apportionment until that case is decided.

b. If, however, the Governor feels some action is desirable at the 1964 session, he recommend a general constitutional amendment which merely authorizes statutory apportionment and establishes procedures and criteria which are flexible enough to meet any of the alternatives which might be required by judicial interpretation of the Fourteenth Amendment.

c. That after the Court has spoken, the proposal of the minority and that of the majority be reconsidered by the Governor and by this Commission, if he sees fit to extend its life, and within 30 days of that decision a permanent plan be presented for statutory enactment at the 1965 session of the General Assembly.

d. That the Governor oppose the passage of the majority plan or any other specific plan at the 1964 session unless all reasonable doubts as to its constitutionality can be erased, or the Court decides the Maryland case in time for action at the session or at a one-day special session at the conclusion of the regular session.

The remainder of this report consists of the sort of discussion and amplification of the reapportionment problem in Maryland and the above recommendations which we believe the majority should have presented.

## II. *The Reapportionment Picture in Maryland*

On April 24, 1962, the Maryland Court of Appeals held that Maryland Courts had jurisdiction of apportionment questions.[1] One month later, the Circuit Court of Anne Arundel County voided Article III, Section 5, of the Maryland Constitution relating to the apportionment of the House of Delegates.[2] Immediately thereafter, the General Assembly in special session enacted a stop-gap apportionment statute to provide for the 1962 general elections.[3] It rejected a constitutional amendment to provide for a permanent apportionment of the House of Delegates.[4] A permanent statutory plan was also eliminated from the stop-gap law.

The stop-gap law was passed under considerable need for haste, since it had to be enacted before May 31. The apportionment formula in that bill provided for a House of 123 members, with two members allocated automatically to each of the 23 counties and six legislative districts of Baltimore. The remaining 65 members were allocated on the basis of population to the counties and legislative districts.

Application of this formula resulted in the shift of 19 seats from smaller counties to the larger counties and city districts. The stop-gap law provided, however, that for the 1962 elections (since the primary had already been held) only the increases would be applied. No county lost representation. This expanded the size of the House to 142 members for the four years, 1962-1966.

As originally drafted, the stop-gap bill (H.B. 1) provided for reversion to a House of 123 members in 1966, and the loss of 19 seats by the smaller counties. This is the section which was eliminated from the Act as finally passed.

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[1] *Maryland Committee for Fair Representation v. Tawes,* 228 Md. 412; 180 A. 2d 656.

[2] *Maryland Committee for Fair Representation v. Tawes,* No. 13,920 Equity, Circuit Court of Anne Arundel County, May 1962.

[3] Chapter I, *Laws,* Extraordinary Session of 1962.

[4] H.B. 2, Extraordinary Session, 1962.

In place of the permanent section, new language was substituted providing (1) that the stop-gap law would expire upon an enactment of a constitutional amendment, (2) that if an amendment is rejected in 1964, then the act will also expire (but is unclear whether in 1966 or 1970), and (3) that if the act expires through rejection of an amendment, the House will revert to its composition in January 1962.

The last is an impossible result, since the January 1962 composition of the House was held to be unconstitutional. While the act contemplates a constitutional amendment in 1964, that is not necessary. The act is a simple statute and may be superseded by a simple statute as well as by an amendment.[5]

*So far as the House alone is concerned, then, either a constitutional amendment in 1964 or a statute in 1965 can adequately and legally handle the problem.* Action is necessary before the filing date for the 1966 elections. If no positive action is taken, there will be no constitutional apportionment of the House, and therefore no House to elect in 1966. The old (1962) apportionment is clearly unconstitutional. There can be little doubt that an extension of the stop-gap legislation would also fail to meet constitutional standards. On these points, the Commission seems to be in general agreement.

The question of the State Senate is more difficult. In July 1962, the Court of Appeals upheld by a vote of four to three the constitutionality of the existing apportionment of the State Senate.[6] That decision was appealed to the Supreme Court of the United States and oral argument was heard by that Court in November 1963. A decision on the case may be anticipated by the conclusion, in June 1964, of the current term of the Court. Because of the uncertainty of the status of the Senate as a result of this

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[5] *MCFR v. Tawes,* 228 Md. 412.

[6] *MCFR v. Tawes,* 229 Md. 406; 184 A. 2d 715 (1962).

uncompleted litigation, the Governor last year granted this Commission's request to delay its final report.[7]

The majority is technically correct in its assumption that the Court of Appeals decision is still the law. That is not in question. The issue is twofold: (1) Whether, when a dispositive decision on the question is at hand, the long and arduous process of constitutional amendment should be set in motion with so much uncertainty as to the ultimate constitutionality of the proposed amendment; and (2) whether the Commission should in any event even consider the question of Senate apportionment.

On the first matter, we of the minority feel that since the Maryland Court of Appeals decision represents the view of a minority of those courts which have ruled on similar, even identical, questions, and since a final decision is but months, perhaps but weeks, away, it is little short of folly to urge on the legislature an amendment which may be (a) incomplete, having made no consideration of the Senate question, (b) unconstitutional by virtue of its violation of guidelines on the apportionment of a single house which are also now being considered by the Supreme Court and the announcement of which are expected at the same time as the decision in the Maryland case. Finally, (c) an amendment such as the Commission submits does not just assume the constitutionality of Senate apportionment; it seeks to ignore Senate apportionment entirely and propose a house plan in a self-imposed vacuum. Thus, such an amendment runs the danger, whatever the Supreme Court decides about the Senate *per se*, of being an unwise as well as an unconstitutional distribution of representation.

As to the second matter of disagreement, the minority feels that in the first instance it is impossible to consider the apportionment of one house of the legislature without reference to the composition of the other. To do so makes no sense from the point of view of the theory and practice of representative government. Nor does it make sense from the point of view of constitutional law.

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[7] Address of the Governor to the General Assembly, January 1963.

It has been recognized from the time of the origin of the theory of bicameralism that the system of representation in one house must be considered in relationship to the system of representation or the interests represented in the other. Lords were not admitted to Commons and in early times if one house represented property, the other was clearly to represent people.

The "federal analogy" which is used to defend the present Maryland system makes the assumption that one house "of course" must be based on population if the other is to represent "area" or jurisdictions. The State so argued before the Supreme Court last November. Numerous state and federal courts have held that *at the very least* the Fourteenth Amendment requires that one house is based on population and no other basis, if a substantial deviation from population is to be permitted in the other. In state after state apportionments have been declared unconstitutional which result in less deviation from population than that resulting from the majority proposal. In no case currently before the Supreme Court has a state defended its apportionment except as the houses relate to each other, and in every case even the defense has conceded that at least one house should be based entirely on population.

### III. *Analysis of the Commission Proposal*

We feel that the only sound approach is to recognize that there is a representative relationship between the two houses and to proceed on that basis. This permits a rational discussion of alternatives. Let us assume, for instance, that the Supreme Court upholds our Court of Appeals, and thus there can be no change in the Senate as a practical matter. Then the apportionment of the House must reflect that condition. We have no objection to the submission of an amendment based on that assumption, especially if it turns out to be a correct one. But the report does not make that assumption. It makes no assumptions at all about Senate representation. The result is a plan which so over-represents the smaller counties in relation to the middle sized and larger counties as to cast its constitutionality into grave doubt.

TABLE I

ANALYSIS OF COMMISSION PROPOSAL

(House of 123, minimum of 2 for each County or Legislative District)

| | % Population | No. Delegates | % Delegate | No. Senators | % Senator |
|---|---|---|---|---|---|
| Baltimore City | 30 | 33 | 27 | 6 | 21 |
| 4 Suburban Counties | 45 | 40 | 33 | 4 | 14 |
| 9 Medium Counties | 17 | 30 | 24 | 9 | 31 |
| 10 Smallest Counties | 8 | 20 | 16 | 10 | 34 |
| TOTAL | 100 | 123 | 100 | 29 | 100 |

Table I shows the extent of the distortion. If we devise a means of measuring legislative power as a rough test of the total system of representation, the situation is even more clearly shown. Since the representative power is equally divided between the two houses, half the power is in each. Thus a unit's total legislative power is represented by ½ its percentage of the total membership of one house added to ½ its percentage of its membership in the other.[8] Table II shows the relationship of legislative power to population which results from the majority proposal.

TABLE II

RELATIONSHIP OF LEGISLATIVE POWER TO POPULATION UNDER THE MAJORITY PROPOSAL

| | % Population | % of Total Legislative Power in Both Houses |
|---|---|---|
| Baltimore City | 30 | 24 |
| 4 Suburbs | 45 | 24 |
| 9 Medium Counties | 17 | 28 |
| 10 Smallest Counties | 8 | 25 |
| | 100 | 101* |

* Total results from rounding.

[8] A full explanation of this method can be found in Alan L. Clem, "Measuring Legislative Malapportionment: In Search of a Better Yardstick," *The Midwest Journal of Political Science*, VII. 125-144 (1963).

The Court of Appeals has ruled in its original decision that "there must be some reasonable relationship of population, or eligible voters, to representation in the General Assembly if an apportionment is to escape the label of constitutionally-prohibited invidious discrimination."[9] No dispassionate analysis of the Commission plan can make it reach that standard, which *is the law of Maryland*, whatever the outcome of the pending case. With 25 per cent of the population, the smaller counties would exercise 53 per cent of the State's legislative power.

*We conclude that the majority plan does not meet general standards of good representation, it does not meet standards deducible as minima from the weight of cases decided, it does not meet the assumptions of the State's own attorneys defending the composition of the Senate, and it does not meet the standards of the existing, unchallenged case law of apportionment in Maryland.*

The authors of the Commission report pretend to be friends of the *status quo* in the Senate. In fact they are its worst enemies, for the plan they present destroys the last vestige of logical defense for the malapportionment of that body. If the majority plan is adopted, its constitutionality can be salvaged only by apportioning the Senate on the basis of population alone. In a Senate of 29 members, this would reduce the Senate representation of the 10 smallest counties to two senators, and the nine medium counties to four senators, with 10 going to the City and 13 to the suburban counties.

Even with a Senate based entirely on population, a minimum of two delegates in a House of 123 members tends to raise possible constitutional objections.

Under the present stop-gap arrangement, the 76 per cent of the people living in the City and four largest counties have 56 per cent of the representation in the House of Delegates. Under the Commission proposal, they would receive only 59 per cent. Even if the House were apportioned on the same formula used by the U. S. House

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[9] *MCFR v. Tawes*, 180 A. 2d 656, 668.

of Representatives, but a minimum of two delegates were guaranteed, 76 per cent of the people could obtain but 66 per cent of the Delegates. If a House of 123 members is desired, the minimum must be reduced to one member for each jurisdiction and the major fractions formula used by the U. S. Bureau of the Census in calculating the apportionment of the U. S. House of Representatives should be applied. Appendix C of this minority report compares the Commission formula with the U. S. Formula. The data in the appendix were supplied the Commission during its deliberations.

## IV. *An Alternative Proposal*

We do not object to the submission of a proposal to reapportion the House based on the assumption of the Senate remaining unchanged. While we think it is unwise to do so, we would recognize the desire to assure the State of a constitutional apportionment of the House. Given the law — the existing law — on the subject, we believe that a House of 123 members, apportioned entirely on the basis of population would be the only certain constitutional complement to the Senate. This does not mean, however, that we think this alone would obviate the need for Senate apportionment, or save it from challenge. Given the present situation, whatever the Senate decision, we feel certain that a House of 123 members apportioned on the basis of population, without regard to any other factor, would be constitutional. We do not, however, favor so extreme a result.

For that reason, the alternative we see as feasible, and also constitutional, is to keep the House at 142 members and to guarantee a minimum of one delegate to each county and to the City of Baltimore. As tables III and IV show, this formula results in a far more fairly apportioned House than the Commission proposal.

## TABLE III

### Comparison of Minority and Majority House Plans

| | *Minority Plan: 142 Members Minimum of 1* | *Majority Plan: 123 Members Minimum of 2* |
|---|---|---|
| Allegany | 4 | 4 |
| Anne Arundel | 8 | 7 |
| Baltimore | 19 | 13 |
| Calvert | 2 | 2 |
| Caroline | 2 | 2 |
| Carroll | 3 | 4 |
| Cecil | 3 | 3 |
| Charles | 2 | 2 |
| Dorchester | 2 | 2 |
| Frederick | 4 | 4 |
| Garrett | 2 | 2 |
| Harford | 4 | 4 |
| Howard | 2 | 2 |
| Kent | 2 | 2 |
| Montgomery | 13 | 10 |
| Prince George's | 14 | 10 |
| Queen Anne's | 2 | 2 |
| St. Mary's | 2 | 2 |
| Somerset | 2 | 2 |
| Talbot | 2 | 2 |
| Washington | 4 | 4 |
| Wicomico | 3 | 3 |
| Worcester | 2 | 2 |
| Baltimore City | 39 | 33 |
| Totals | 142 | 123 |

## TABLE IV

### ANALYSIS OF MINORITY PLAN[a]

(House of 142, Minimum of One)

| | *% Population* | *Delegates* | *% Delegates* |
|---|---|---|---|
| Baltimore City | 30 | 39 | 27 |
| 4 Suburban Counties | 45 | 54 | 38 |
| 9 Medium Counties | 17 | 29 | 20 |
| 10 Smallest Counties | 8 | 20 | 14 |
| | 100 | 142 | 99* |

(a) The formula used is that of adjusted population ratio. Other formulae will produce different results. This formula was chosen, not because it is best, but because it most nearly resembles that used in the Commission proposal.

* Total results from rounding.

## TABLE V

RELATIONSHIP OF LEGISLATIVE POWER TO POPULATION UNDER THE MINORITY PROPOSAL

| | % Population | % of Total Legislative Power in Both Houses |
|---|---|---|
| Baltimore City | 30 | 25 |
| 4 Suburban Counties | 45 | 26 |
| 9 Medium Counties | 17 | 25 |
| 10 Smallest Counties | 8 | 24 |
| | 100 | 100 |

Should the Senate ultimately have to be reapportioned, we believe this gives room there to retain a Senator for each county, adding members to accommodate population growth. Table V indicates two things. One is that a balance between the four groups of jurisdictions is struck in terms of total legislative power. Each has roughly ¼ of the total strength. While interesting, this may not be material. What remains apparent is the second matter — that Senate malapportionment still results in substantial disparities in legislative power. Without reapportioning the Senate itself, the only way to reach a more reasonable relationship to population would be to overrepresent urban areas in the House to the same extent they are underrepresented in the Senate, and reverse the treatment for th smaller counties. No one seriously advocates this.

To recapitulate, we think that if an amendment on the House must be submitted in 1964, the minority proposal will meet the constitutional tests and will obviate the danger that in any future reapportionment of the Senate the tradition of a minimum of a Senator from each county must be abandoned. A smaller House than 142 or a larger minimum than one will not assure so salutary a result.

### V. *A Permanent Solution for the Reapportionment Problem*

Now we turn from the question of the expedient to what we consider the proper function of the Commission:

the development of a permanent proposal for reapportionment of the General Assembly. We proceed to this task because we feel an obligation to present a well conceived plan capable of meeting the constitutional standards which may be anticipated and adapted to the problem of effective representative government in Maryland.

To develop such a plan, we find as fundamental the following propositions:

1. Apportionment of both houses, and of the legislature as a whole, must bear a reasonable relationship to population.[10] Population is the starting point, and deviation from population, while permissible, must be justified as consistent with equal protection standards.[11]

2. The principles of representative government require that as a minimum condition, the apportionment must permit a substantial majority of the people to elect a majority of the lawmakers. It is not enough that the majority be able to prevent its abuse by a minority. The majority must have the power to rule within constitutional bounds.[12]

3. The "Federal Analogy" is inapposite for state government in establishing a system of representation.[13]

4. There are three apportionment traditions of material importance in Maryland:

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[10] Here we rely on the weight of existing court decisions and learned articles on this subject. This view is buttressed by that of the Advisory Commission on Intergovernmental Relations, *Apportionment of State Legislatures* (U. S. Govt. Printing Office, 1962). See especially Chapter V, "Principles for Consideration and Use of Governors, Legislators and State and Federal Courts," pp. 59 ff.

[11] These standards, stated briefly, are: 1. The deviations must be for a permissible state purpose. 2. Classifications must be made only pursuant to a rational policy and must not result in "invidious discrimination." 3. Persons in the same class may not be treated differently from others similarly situated.

[12] *Sincock v. Duffy*, 215 F. Supp. 169, U.S. D.C. (Del., 1963). Oral argument heard Dec. 9, 1964, U.S. S.C. Oct. Term, 1963, No. 307.

[13] *Gray v. Sanders*, 372 U.S. 368 (1962); *Mann v. Davis*, 213 F. Supp. 577 U.S. D.C. (E.D. Va., 1962).

a. The guarantee of minimum representation for each county.

b. The recognition of population in assignment of senators to Baltimore City.

c. Where more than one Senator is allocated to a jurisdiction, it should be divided into legislative districts.

5. Where minimums are permitted, the house concerned must be of sufficient size to prevent unreasonable distortion of the representation-population ratio.

6. In the City of Baltimore and the large counties, the heterogeneity of the population, the diversity of occupations and interests and the sheer size of the population and therefore the number of its representatives make elections at-large infeasible and probably undesirable.

7. Because of the significance of the counties and the City of Baltimore in the total scheme of government in Maryland, each county and the City should be assured of at least one representative in each house of the General Assembly. This assures a voice for its corporate interests.

8. No plan can be sustained for either house which is not uniform throughout the State or which provides advantages to people in one jurisdiction not provided in another.

9. As a working rule, the size of the Senate should not exceed ⅓ that of the House. Given these principles, a number of plans are possible. We present what we think on balance is preferable for a state like ours.

THE HOUSE OF DELEGATES should be composed of 142 members, apportioned on the basis of population, except that each county and the City of Baltimore would be guaranteed one (1) Delegate.[14] Thus, 118 Delegates would

[14] We do not believe that in the initial allocation of seats there is any justification for guaranteeing Baltimore City six and the large counties only one. The total result is the same now, but in time could be different. There is no sense in raising a constitutional question where there is no need of it.

be apportioned on population alone. We recommend the use of an adjusted population ratio formula for the apportionment. While there are more desirable formulae, this one is readily understood and quite adequate for apportioning so small a house. We are acutely aware of the arguments for reducing the size of the House to 123 members. We should like to see the size of the House reduced to its traditional figure, but do not believe this is possible, without giving up the minimum of one Delegate, the advantages of which are important in a state with so heavy a burden of local legislation, or without apportioning the Senate strictly on population.

THE SENATE should be reapportioned to make possible its responsibility to a majority of the people, but it should be so designed to account for other factors which are not heavily weighted in the House. We recommend that the Senate contain 47 members apportioned on the basis of population, except that every county and the City should be guaranteed one Senator, whatever its population. This requirement so overrepresents the small counties that at least seventeen seats must be added to make majority control possible. Because of the rapid population growth and the need for greater flexibility, we recommend the 47 seat Senate, thereby providing 23 senators representative of population alone and 24 as guaranteed representatives of the jurisdictions. We emphasize that this leaves a heavy bias toward the small counties as Table VI shows. We also emphasize that if the Senate's size should fall below 41 members, it would be necessary to combine small counties to form senatorial districts in order to provide even marginal control of the Senate for the vast majority of the State's electorate. We do not think this is desirable in a State with much local legislation to enact. It is not necessary if our recommendation is followed.

Taking the proposals for the two houses jointly, this plan would take a far less heavy toll of incumbent members, while offering a far more equitable system of representation than that proposed in the Commission report. As shown in Table VII, the relationship of representation to population makes possible majority rule, but still affords

substantial representation beyond population requirements for small counties.

DISTRICTS. We propose that the City of Baltimore and any county entitled to more than one senator be divided into as many legislative districts as it has senators, with the Delegates divided as equally as possible among these same districts. We feel that Senators and Delegates should be nominated and elected within these districts. This would permit the representative system more accurately to reflect the diversity of our large population centers, insure some seats to the minority party, and enhance contact between the voters and their representatives.

TABLE VI

APPORTIONMENT OF THE HOUSE AND SENATE
UNDER PERMANENT PROPOSALS
OF THE MINORITY

| | % *Population* | *House* | % *Delegate* | *Senate* | % *Senate* |
|---|---|---|---|---|---|
| Baltimore City | 30 | 39 | 27 | 10 | 21 |
| 4 Surburan Counties | 45 | 54 | 38 | 17 | 36 |
| 9 Medium Counties | 17 | 29 | 20 | 10 | 21 |
| 10 Smallest Counties | 8 | 20 | 14 | 10 | 21 |
| TOTALS | 100 | 142 | 99* | 47 | 99* |

* Total results from rounding.

TABLE VII

RELATIONSHIP OF LEGISLATIVE POWER TO POPULATION
UNDER PERMANENT PROPOSALS
OF THE MINORITY

| | % *Population* | % *of Total Legislative Power in Both Houses* |
|---|---|---|
| Baltimore City | 30 | 25 |
| 4 Suburban Counties | 45 | 37 |
| 9 Medium Counties | 17 | 21 |
| 10 Smallest Counties | 8 | 18 |
| TOTALS | 100 | 101* |

* Total results from rounding.

We recommend that the districts be drawn in such a manner that they do not deviate more than 10 per cent in population within any given jurisdiction. Where the number of delegates is such that it cannot be evenly divided among the districts, those districts with the most rapid rate of population growth should be given the larger number of delegates.

IMPLEMENTATION. This proposal should be implemented in two steps.

1. A general constitutional amendment should be enacted for submission to the people in either 1964 or 1966. This amendment should contain the basic criteria for apportionment and provide the procedure for its accomplishment following each federal decennial census of Maryland.

Specifically, the amendment should vest the power to apportion by statute in the legislature. If the legislature does not act, apportionment should become the duty of the Secretary of State. The amendment should specify the size of the houses, minimum guarantees in each, and the use of the population standard for the number to be apportioned. It should permit the establishment of legislative districts, and establish criteria for their creation.

It is our strong suggestion that this amendment be submitted at the 1966 general elections. This would permit its evaluation in light of the decisions of the Supreme Court. We do not anticipate the need for revisions, but there is no reason to proceed without such review. A draft amendment of the sort described is contained in Appendix A of this minority report.

If it is deemed necessary to submit an amendment at the 1964 session, a more generalized version appears in Appendix B. That draft is more permissive and is drawn in language designed to afford maximum flexibility to the General Assembly in meeting such legal requirements as may arise without the need for a new constitutional amendment.

2. A statute, containing the permanent plan proposed above should be enacted at the 1965 session of the legislature. It would thus govern the 1966 elections at which the amendment would be submitted. The latter is legally unnecessary, but provides constitutional protections for the small counties, thus seems desirable if the system is to be stabilized.

The statute could be re-enacted after adoption of the amendment, or be worded to make re-enactment unnecessary. We favor the use of a statutory plan pursuant to an amendment to keep the Constitution uncluttered and to permit minor improvements in such matters as districting or in specific formulae without the necessity of full scale constitutional amendment. The lessons of the apportionment battle this report hopefully closes should at least caution us against freezing either too much or too little into the Constitution itself.

## VI. *Conclusions*

For four long and contentious years our State has been troubled by its chronic malapportionment. The history of legislative action has been one of too little, too late. The majority report is, unfortunately another episode in this dreary performance. Because it is based at best on hunch, and trusts entirely to luck for both its adoption and legal survival, we of the minority have set forth our views in detail. We seek here to do what this Commission had the opportunity to do — at last to provide intelligent, considered leadership toward solution of a most perplexing problem fundamental to the vitality and capacity of State government. We have stated our views in the hope that when the inevitable day of reckoning for this subject has been reached, your excellency will be provided with a suitable, constitutional, and practical proposal and the support necessary to speed its enactment.

# MINORITY REPORT

## Appendix A

### Proposed Amendment to Provide Reapportionment Procedure

(For submission in 1966)

Amendment to Article III to read as follows:

Section 2. The membership of the House of Delegates shall consist of 142 Delegates. Each county and the City of Baltimore shall be entitled to a minimum of one Delegate. The remaining number of Delegates shall be apportioned among the several counties and the City of Baltimore on the basis of population.

Section 3. The membership of the State Senate shall consist of 47 Senators. Each county and the City of Baltimore shall be entitled to a minimum of one Senator. The remaining number of Senators shall be apportioned among the several counties and the City of Baltimore on the basis of population.

Section 4. The General Assembly shall, at the first regular session subsequent to the adoption of this amendment, and thereafter at the first regular session subsequent to the publication of the federal decenniel census of the population of Maryland, enact a plan of apportionment consistent with this article and the requirements of the Constitution and laws of the United States. If the General Assembly adjourns *sine die* without complying with this section, the Secretary of State shall within thirty days promulgate a plan of apportionment consistent with this Article and with the requirements of the Constitution and laws of the United States. Such plan shall govern the next ensuing election of Delegates and Senators.

Section 5. The General Assembly may provide by law for the establishment of legislative districts for the election of Senators and Delegates in the City of Baltimore and in all counties which shall be entitled to more than

one Senator in such plans of apportionment as it shall enact pursuant to this article. All such districts shall be composed of contiguous territory, shall be compact in form and their respective populations shall not vary in population by more than ten per cent from the mean population for such districts in the respective counties in which they are established, or in the City of Baltimore.

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## APPENDIX D

STATES ARRANGED IN ORDER OF NUMBER OF POLITICAL SUBDIVISIONS, COUNTIES, PARISHES AND INDEPENDENT CITIES

(Compiled from Rand McNally Cosmopolitan World Atlas)

| | | | |
|---|---|---|---|
| Texas | 254 | New York | 62 |
| Georgia | 159 | California | 58 |
| Virginia | 140 | Montana | 56 |
| Kentucky | 120 | West Virginia | 55 |
| Missouri | 115 | North Dakota | 53 |
| Kansas | 105 | South Carolina | 46 |
| Illinois | 102 | Idaho | 44 |
| North Carolina | 100 | Washington | 39 |
| Iowa | 99 | Oregon | 36 |
| Tennessee | 95 | New Mexico | 32 |
| Nebraska | 93 | Utah | 29 |
| Indiana | 92 | Alaska | 24 |
| Ohio | 88 | Maryland | 24 |
| Minnesota | 87 | Wyoming | 23 |
| Michigan | 83 | New Jersey | 21 |
| Mississippi | 82 | Nevada | 17 |
| Oklahoma | 77 | Maine | 16 |
| Arkansas | 75 | Vermont | 14 |
| Wisconsin | 72 | Massachusetts | 14 |
| Alabama | 67 | Arizona | 14 |
| Florida | 67 | New Hampshire | 10 |
| Pennsylvania | 67 | Connecticut | 8 |
| South Dakota | 67 | Hawaii | 5 |
| Louisiana | 64 | Rhode Island | 5 |
| Colorado | 63 | Delaware | 3 |

STATES ARRANGED IN ORDER OF RATIO OF NUMBER OF SEATS IN UPPER HOUSE TO NUMBER OF POLITICAL SUBDIVISIONS, 1964

| STATE | SENATE SEATS | SUB-DIVISIONS | RATIO |
|---|---|---|---|
| Rhode Island | 46 | 5 | 9.2 |
| Delaware | 17 | 3 | 5.7 |
| Hawaii | 25 | 5 | 5.0 |
| Connecticut | 36 | 8 | 4.5 |
| Massachusetts | 40 | 14 | 2.8 |
| New Hampshire | 24 | 10 | 2.4 |
| Maryland (ch. 3) | 53 | 24 | 2.2 |
| Vermont | 30 | 14 | 2.1 |
| Maine | 34 | 16 | 2.1 |
| Arizona | 28 | 14 | 2.0 |
| Washington | 49 | 39 | 1.3 |
| Wyoming | 27 | 23 | 1.2 |
| Montana | 56 | 56 | 1.0 |
| South Carolina | 46 | 46 | 1.0 |
| Idaho | 44 | 44 | 1.0 |
| New Mexico | 32 | 32 | 1.0 |
| New Jersey | 21 | 21 | 1.0 |
| Nevada | 17 | 17 | 1.0 |
| New York | 58 | 62 | .9 |
| North Dakota | 49 | 53 | .9 |
| Utah | 25 | 29 | .8 |
| Alaska | 20 | 24 | .8 |
| Minnesota | 67 | 87 | .8 |
| Oregon | 30 | 36 | .8 |
| Pennsylvania | 50 | 67 | .7 |
| California | 40 | 58 | .7 |
| Florida | 43 | 67 | .6 |
| Illinois | 58 | 102 | .6 |
| Louisiana | 39 | 64 | .6 |
| Mississippi | 52 | 82 | .6 |
| Oklahoma | 44 | 77 | .6 |
| West Virginia | 32 | 55 | .6 |
| Alabama | 35 | 67 | .5 |
| Colorado | 35 | 63 | .5 |
| Indiana | 50 | 92 | .5 |
| Iowa | 50 | 99 | .5 |
| South Dakota | 35 | 67 | .5 |
| Nebraska | 49 | 93 | .5 |
| North Carolina | 50 | 100 | .5 |
| Arkansas | 35 | 75 | .4 |
| Kansas | 40 | 105 | .4 |
| Michigan | 34 | 83 | .4 |
| Ohio | 33 | 88 | .4 |

| | | | |
|---|---|---|---|
| Wisconsin | 33 | 72 | .4 |
| Georgia | 54 | 159 | .3 |
| Kentucky | 38 | 120 | .3 |
| Missouri | 34 | 115 | .3 |
| Tennessee | 33 | 95 | .3 |
| Virginia | 40 | 140 | .3 |
| Texas | 31 | 254 | .1 |

COMPARISON OF 53 MEMBER SENATE UNDER CHAPTER 3 AND BY RULE OF MAJOR FRACTIONS WITH NO MINIMUM GUARANTEE

| | SENATE | NUMBER OF SEATS | | | |
|---|---|---|---|---|---|
| *County* | *% of Population X 53 =* | *on Whole No.* | *on Fraction* | *Total* | *Per Chapter 3* |
| Allegany | 1.44 | 1 | | 1 | 1 |
| Anne Arundel | 3.53 | 3 | 1 | 4 | 3 |
| Baltimore | 8.42 | 8 | | 8 | 7 |
| Baltimore City: | | | | | |
| District No. 1 | 2.16 | 2 | | 2 | 2 |
| District No. 2 | 2.84 | 2 | 1 | 3 | 2 |
| District No. 3 | 2.91 | 2 | 1 | 3 | 2 |
| District No. 4 | 2.72 | 2 | 1 | 3 | 2 |
| District No. 5 | 2.78 | 2 | 1 | 3 | 2 |
| District No. 6 | 2.63 | 2 | 1 | 3 | 2 |
| Calvert | .27 | | | — | 1 |
| Caroline | .33 | | | — | 1 |
| Carroll | .90 | | 1 | 1 | 1 |
| Cecil | .83 | | 1 | 1 | 1 |
| Charles | .56 | | 1 | 1 | 1 |
| Dorchester | .51 | | 1 | 1 | 1 |
| Frederick | 1.23 | 1 | | 1 | 1 |
| Garrett | .35 | | | — | 1 |
| Harford | 1.31 | 1 | | 1 | 1 |
| Howard | .62 | | 1 | 1 | 1 |
| Kent | .26 | | | — | 1 |
| Montgomery | 5.83 | 5 | 1 | 6 | 6 |
| Prince George's | 6.11 | 6 | | 6 | 6 |
| Queen Anne's | .28 | | | — | 1 |
| St. Mary's | .67 | | 1 | 1 | 1 |
| Somerset | .34 | | | — | 1 |
| Talbot | .37 | | | — | 1 |
| Washington | 1.56 | 1 | 1 | 2 | 1 |
| Wicomico | .84 | | 1 | 1 | 1 |
| Worcester | .41 | | | — | 1 |
| | 53.01 | 38 | 15 | 53 | |